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United States
Circuit Court of Appeals
For the Ninth Circuit.

FRANK P. McKINNEY, as Receiver of the OLYMPIA BANK & TRUST
COMPANY, a Corporation,

Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and
A. R. TITLOW as Receiver of the UNITED STATES NATIONAL
BANK OF CENTRALIA,

Appellees,

and

C. S. REINHART and C. WILL SHAFFER, Stockholders of OLYMPIA BANK
& TRUST COMPANY, a Corporation, for Themselves and All Other
Stockholders of Said Company,

Appellants,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and
A. R. TITLOW as Receiver of the UNITED STATES NATIONAL
BANK OF CENTRALIA,

Appellees,

and

ROY A. LANGLEY, as Receiver of the STATE BANK OF TENINO,

Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and
A. R. TITLOW as Receiver of the UNITED STATES NATIONAL
BANK OF CENTRALIA,

Appellees

Transcript of Record.

DEC 18 1916

F. D. Monckton

Upon Appeals from the United States District Court for the
Western District of Washington, Southern Division.

United States
Circuit Court of Appeals
For the Ninth Circuit.

ANK P. McKINNEY, as Receiver of the OLYMPIA BANK & TRUST
COMPANY, a Corporation,

Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and
A. R. TITLOW as Receiver of the UNITED STATES NATIONAL
BANK OF CENTRALIA,

Appellees,

and

J. REINHART and C. WILL SHAFFER, Stockholders of OLYMPIA BANK
& TRUST COMPANY, a Corporation, for Themselves and All Other
Stockholders of Said Company,

Appellants,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and
A. R. TITLOW as Receiver of the UNITED STATES NATIONAL
BANK OF CENTRALIA,

Appellees,

and

W. A. LANGLEY, as Receiver of the STATE BANK OF TENINO,

Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and
A. R. TITLOW as Receiver of the UNITED STATES NATIONAL
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Transcript of Record.

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Names and Addresses of Attorneys.

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Washington, THOS. M. VANCE, Esquire,
Olympia, Washington,

Solicitors for Complainant and Appellee in
Cause No. 32-E.

FRANK C. OWINGS, Esquire, Olympia, Wash-
ington,

Solicitor for Complainant in Case No. 50-E.

R. P. OLDHAM, Esquire, Hoge Bldg., Seattle,
Washington, and R. C. GOODALE, Esquire,
Hoge Bldg., Seattle, Washington,

Solicitors for Appellant Titlow, etc.

THOS. M. VANCE, Esquire, Olympia, Washing-
ton, and THOS. L. O'LEARY, Esquire, Olym-
pia, Washington,

Solicitors for Intervenors. [1*]

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

No. 32-E—IN EQUITY.

FRANK P. McKINNEY, as Receiver of the
OLYMPIA BANK & TRUST COMPANY,
Complainant,

vs.

A. R. TITLOW, as Receiver of the UNITED
STATES NATIONAL BANK OF CEN-
TRALIA, Substituted for C. A. SNOWDEN,
Defendant,

*Page-number appearing at foot of page of original certified Tran-
script of Record.

24. Intervenor's Proof of Service of Citation and Notice of Appeal.
25. Statement of Facts Proposed by Complainant in Cause No. 32-E, Intervenor in Cause No. 32-E and Complainant in Cause No. 50-E.
26. Following exhibits of intervenors: 1, 2, 3, 4, 5, 6 and 7. [3]
27. The following exhibits of defendants in cause No. 32-E: "A," "B," "C," "D," "E," and "F."

IN CAUSE No. 50-E.

1. Bill of Complaint.
2. Answer.
3. Decree.
4. Petition of Complainant for Appeal and Allowance of Same by the Court.
5. Complainant's Assignment of Errors.
6. Bond on Appeal.
7. Citation and Notice of Appeal.
8. Proof of Service of Citation and Notice of Appeal.
9. Statement of Facts Proposed by Complainant and Intervenor in Cause No. 32-E and by Complainant Herein.
10. Notice of Hearing on Application for Enlargement of Time and Consolidation of Causes 32-E and 50-E.
11. Application to Consolidate this Cause With Cause No. 32-E.
12. Application for Enlargement of Time Within Which to File Transcript on Appeal.

13. Affidavit of Frank C. Owings Supporting Application for Enlargement of Time Within Which to File Transcript.
14. Order Granting Application to Consolidate the Cause with Cause No. 32-E.
15. Order Granting Application for Enlargement of Time Within Which to File Transcript.
[4]
16. The following exhibits of complainant in cause No. 50-E: 1, 2, 3, 4 and 5.
17. The following exhibits of the defendant in cause No. 50-E:

P. M. TROY,

R. F. STURDEVANT,

Solicitors for Complainant in Cause No. 32-Equity.

C. WILL SHAFFER,

C. S. REINHART,

Intervenors in Cause No. 32-Equity.

FRANK C. OWINGS,

Solicitor for Complainant in Cause No. 50-Equity.

Service of the foregoing Praecipe by receipt of copy thereof admitted this 16th day of September, 1916.

R. P. OLDHAM,

R. C. GOODALE,

Solicitors for Defendant. [5]

First Amended Bill of Complaint.

To the Honorable Judge of the Above-named Court:

Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, a corporation, brings this his amended Bill of Complaint, consent of the de-

defendants herein being first obtained for the filing of the same, against C. A. Snowden, A. R. Titlow substituted, as receiver of the United States National Bank of Centralia, Washington, a corporation, defendant.

Your orator complains and for a first cause of action says:

I.

That the Olympia Bank & Trust Company was and is a corporation duly organized under the laws of the State of Washington, for the purpose of conducting a banking business under the laws of the State of Washington as a state bank with its principal place of business at Olympia, Thurston County, Washington.

II.

That on the 29th day of September, 1914, such proceedings were had in the Superior Court of the State of Washington for Thurston County, in a certain cause entitled State [6] of Washington on the relation of W. V. Tanner, as Attorney General, Plaintiff, vs. The Olympia Bank & Trust Company, a corporation, defendant No. 5628, that the said Olympia Bank & Trust Company was adjudged to be insolvent, and that on October 14, 1914, your orator, the complainant, Frank P. McKinney was appointed receiver thereof, and that he has been since said date and ever since and now is the duly appointed, qualified and acting receiver of the said Olympia Bank & Trust Company.

III.

That heretofore and prior to the said 29th day of

September, 1914, the said United States National Bank was a corporation duly and regularly organized under the laws of the United States and was a National Bank, engaged in the banking business, with its principal place of business at Centralia, Washington; that several days prior to the adjudication of the Olympia Bank & Trust Company to be insolvent and the appointment of a receiver therefor, the said United States National Bank at Centralia, Washington became insolvent and was placed in the hands of a receiver under the acts of Congress providing for the management and winding up of the affairs of insolvent banks, and that the defendant, C. A. Snowden is the duly appointed, qualified and acting receiver of the said United States National Bank, a corporation, and the said A. R. Titlow has been substituted.

IV.

That your orator, the complainant, as receiver of the said Olympia Bank & Trust Company has received permission from the Superior Court of the State of Washington for Thurston County, as its receiver, to commence this action and that he has procured permission from the above-entitled court for leave to sue the above-named defendant receiver. [7]

V.

That during the months of August and September, 1914 one W. Dean Hays, was cashier of the said Olympia Bank & Trust Company, and one Charles S. Gilchrist was cashier of the United States National Bank of Centralia, and that during all of the

months of August and September, 1914, the said United States National Bank was insolvent, as said cashiers well knew, and so knowing entered into a fraudulent conspiracy for the deceiving of the United States Bank Inspector, and preventing him from discovering the condition of the said United States National Bank aforesaid, by which it was agreed that the said W. Dean Hays would transmit from the said Olympia Bank & Trust Company of the funds and moneys belonging thereto, the sum of \$36,550 until the inspection of the said United States National Bank had passed the inspector, and that then the said funds and moneys should be returned to the said Olympia Bank & Trust Company, and that in pursuance of the said fraudulent agreement the said W. Dean Hays did transmit of the funds and moneys of the said Olympia Bank & Trust Company, \$36,550 to the said cashier Gilchrist and through him to the said United States National Bank of Centralia, without the knowledge or consent of the said Olympia Bank & Trust Company or its officers and stockholders and that such transmission was made immediately before the closing of the said United States National Bank and the appointment of the said receiver, and the taking possession of the said bank by the said receiver, and the said funds and moneys were then and now are in the hands of the said receiver; that demand has been made upon the said receiver for the receiver for the return of the said funds and moneys to the said receiver of the said Olympia Bank & Trust Company, but the said [8] receiver of the said United States National

Bank refuses so to do, and has ever since, and does now refuse.

For a further and second cause of action, your orator, the complainant, alleges, as follows, to wit:

I.

Refers to paragraphs I, II, III and IV of the first cause of action herein, and makes the same a part of this second cause of action.

II.

That prior to the insolvency of the said Olympia Bank & Trust Company and the said United States National Bank of Centralia, the Olympia Bank & Trust Company, at the request of the said United States National Bank, remitted to the State Bank of Tenino the sum of Ten Thousand (10,000) Dollars, and that the said United States National Bank of Centralia, by reason thereof, became indebted to the [9] complainant in the sum of ten thousand (10,000) dollars, and had and received from the complainant ten thousand (10,000) dollars.

III.

That the United States National Bank did not give the Olympia Bank & Trust Company credit therefor, and that although frequent demand has been made therefor by the complainant upon the said receiver of the United States National Bank that it receive credit for the said ten thousand (10,000) dollars and the said receiver of the said United States National Bank has refused and does now refuse to give the complainant as such receiver credit therefor.

For a further, and third cause of action, your orator, the complainant, alleges:

I.

Refers to paragraphs I, II, III, IV, of the first cause of action herein and makes the same a part of this third cause of action.

II.

That prior to the insolvency of the said Olympia Bank & Trust Company, and the United States National Bank, and during August and September, 1914, the said United States National Bank had on deposit with it, funds of the said Olympia Bank & Trust Company and that pretending to pay off the notes executed by Blumauers (the several names of the makers of the said notes complainant is unable more definitely to state) with the moneys of the Olympia Bank & Trust Company and with no right or authority whatsoever so to do from the said Olympia Bank & Trust Company, it charged and took credit to itself for the funds of the said Olympia Bank & Trust Company in the sum of \$9500; That thereafter it retained and kept the said notes signed by said Blumauers and that by reason thereof there was abstracted [10] and taken from the funds of the said Olympia Bank & Trust Company the sum of \$9500, for which the United States National Bank became indebted to the said Olympia Bank & Trust Company; that the said notes remain in the said United States National Bank, and were there when the said bank went into the hands of the receiver, and, as your orator is advised and believes the said notes still remain in the hands of the receiver of the said United States National Bank.

III.

That your orator has repeatedly requested and demanded of the receiver of the said United States National Bank, defendant herein, that he be allowed credit for the said \$9,500 from the said United States National Bank, and that the said defendant has refused and does still refuse so to do.

WHEREFORE your orator prays the Court as follows, to wit:

1. That a subpoena issue to the defendant requiring him to appear in court in answer hereto.

2. That there be an accounting between your orator and the defendant and the said two insolvent banks, and that the claims set forth in the said three preceding causes of action as belonging to the said complainant in the sum of \$56,050, be allowed and established in favor of the said complainant, less any credits to which it may appear the defendant is entitled, and that the same, or so much thereof as to the Court shall seem meet and proper be adjudged to be a preferred lien and claim in favor of the complainant and against the defendant.

3. For his costs and disbursements of suit hereon.

4. For such other and further relief as to the Court shall seem meet in the premises.

P. M. TROY,

R. F. STURDEVANT,

Attorneys for Complainant.

(Verified.)

(Filed Apr. 3, 1915.) [11]

Answer to First Amended Bill of Complaint.

A. R. Titlow, as receiver of the United States National Bank of Centralia, Washington, for answer to the first amended bill of complaint herein says:

Referring to complainant's first cause of action,

I.

That the facts set forth therein are insufficient to constitute a valid cause of action in equity.

Without waiving the foregoing objections to the complaint, defendant further answering, denies and alleges as follows:

II.

Referring to paragraph I, denies that the Olympia Bank and Trust Company was or is a corporation duly organized for the purpose of conducting a banking or any other business.

III.

Admits the allegations of paragraph two.

IV.

Referring to paragraph three, admits that heretofore and prior to September 29, 1914, the United States National Bank of Centralia was a corporation duly organized under the laws of the United States and was a national bank engaged in the banking business with its principal place of business at Centralia, Washington; that sometime prior to September 29, [12] 1914, the United States National Bank became insolvent and was placed in the hands of a receiver under the acts of Congress providing for the management and winding up of

affairs of insolvent banks, but defendant says that neither such insolvency or receivership occurred before September 21, 1914; denies that C. A. Snowdon is the duly appointed, qualified and acting receiver of the United States National Bank, but admits that C. A. Snowdon was such receiver from on or about November 16th, 1914, until March 1, 1915, on which last named date the defendant, A. R. Titlow was substituted for Snowdon as such receiver.

V.

Referring to paragraph four, defendant says that he is without knowledge as to any of the allegations therein contained.

VI.

Referring to paragraph five, admits that during the months of August and September, 1914, one W. Dean Hayes was cashier of the Olympia Bank & Trust Company; denies that Charles S. Gilchrist was cashier of the United States National Bank of Centralia and alleges the fact to be that he was vice-president of that bank; denies that during all of the months of August and September, 1914, or at any time prior to September 21st, 1914, the United States National Bank was insolvent and denies that Hayes and Gilchrist or either of them knew or had reason to believe that that bank was insolvent; denies that Hayes and Gilchrist entered into a conspiracy, fraudulent or otherwise, for the purpose of deceiving the United States National Bank Inspector and preventing him from discovering the condition of the United States National Bank, or for any other purpose; denies that it was

agreed that Hayes would transmit from the Olympia Bank & Trust Company, of the [13] funds and moneys belonging thereto or any other funds or moneys, the sum of Thirty-six Thousand Five Hundred Fifty Dollars (\$36,550) or any other sum, until the inspection of the United States National Bank had passed, or for any other period; denies that there was any agreement for the return of the sums named in paragraph five or any other sum to the Olympia Bank & Trust Company; denies that W. Dean Hayes transmitted, of the funds and moneys of the Olympia Bank & Trust Company, Thirty-six Thousand Five Hundred Fifty Dollars (\$36,550) or any other sum to Gilchrist and denies that through Gilchrist or otherwise any such transmission of funds from the Olympia Bank & Trust Company to the United States National Bank of Centralia was made, immediately before the closing of the United States National Bank and the appointment of the receiver and the taking possession of the bank by the receiver or at any other time; denies that said funds and moneys or any part thereof were then or at any other time or now are in the hands of the receiver.

Further answering, and for a first affirmative and complete defense to the first cause of action, defendant says, that at various times during the months of August and September, 1914, the United States National Bank in the regular course of business sold commercial paper to the Olympia Bank & Trust Company, payment for which was made in some cases by the United States National

Bank's charging the account of the Olympia Bank & Trust Company, and in others by checks or drafts drawn by the Olympia Bank & Trust Company upon its account with the United States National Bank; that if the alleged transfer of funds mentioned in paragraph five of the complaint occurred at all, it was merely a payment by the Olympia Bank & Trust Company to the United States National Bank for commercial paper in the usual course of business. [14]

Further answering, and for a second affirmative and complete defense to the first cause of action, defendant says, that during the months of August and September, 1914, the United States National Bank of Centralia was the custodian for the Olympia Bank & Trust Company of certain promissory notes of various persons, of the aggregate face value of Forty-eight Thousand Dollars (\$48,000). That at some time or times during August or September, 1914, the United States National Bank at the request of the Olympia Bank & Trust Company, returned to it certain of those notes, aggregating the principal sum of Thirty-six Thousand Five Hundred Fifty Dollars (\$36,550); that the United States National Bank of Centralia and its receiver still hold for the Olympia Bank & Trust Company the remainder of those notes, aggregating the principal sum of Eleven Thousand Four Hundred Fifty Dollars (\$11,450), which notes defendant is ready and willing to return to the Olympia Bank & Trust Company, or its receiver, on demand.

For answer to complainants further and second cause of action defendant says:

I.

That the facts set forth therein are insufficient to constitute a valid cause of action in equity.

II.

Further answering, but without waiving the foregoing objection, defendant repeats the admissions and denials contained in his answer to paragraphs one, two, three and four of complainants first cause of action and makes the same a part of this his answer to complainant's second cause of action.

III.

Denies that prior to the insolvency of the Olympia Bank & Trust Company and the United States National Bank of Centralia or at any other time the Olympia Bank & Trust Company, [15] at the request of the United States National Bank remitted to the State Bank of Tenino the sum of Ten Thousand Dollars (\$10,000) or any other sum; denies that the United States National Bank of Centralia by reason of any such transaction became indebted to the claimant in the sum of Ten Thousand Dollars (\$10,000) or any other sum and that it had and received from the complainant Ten Thousand Dollars (\$10,000) or any other sum.

For answer to the complainant's further and third cause of action defendant says:

I.

He repeats the admissions and denials contained in his answer to paragraphs one, two, three, and

four of the first cause of action herein and makes the same a part of his answer to complainant's third cause of action.

II.

Referring to paragraph two, denies that the Olympia Bank & Trust Company, prior to its insolvency and the insolvency of the United States National Bank and during August and September, 1914, or at any of those times or at any other time, had on deposit with the United States National Bank funds belonging to the Olympia Bank & Trust Company; denies that pretending to pay off notes executed by Blaumauers or any other person or persons, the United States National Bank charged and took credit for the funds of the Olympia Bank & Trust Company in the sum of Ninety-five Hundred Dollars (\$9500) or any other sum; denies that any such transaction was without right or authority from the Olympia Bank & Trust Company, and that any indebtedness arose out of any such transaction from United States National Bank to the Olympia Bank & Trust Company.

Further answering, and for a first affirmative and complete defense to complainant's third cause of action, defendant alleges the facts concerning the transactions mentioned [16] in complainant's third cause of action to be that on or about September 4th, 1914, the United States National Bank, pursuant to an arrangement duly made with the Olympia Bank & Trust Company sold to the Olympia Bank & Trust Company the following commercial paper in the usual course of business:

Note of T. H. McLafferty.....	\$2500.00
Note of Blumauer Logging Company.....	
.....	3500.00
Note of Blumauer Logging Company.....	
.....	3500.00

Defendant admits that the United States National Bank charged the agreed consideration for the transfer of these notes, to wit; the sum of Ninety-five Hundred Dollars (\$9500) to the Olympia Bank & Trust Company; defendant admits that these notes still remain in his hands but says that he is ready and willing and has heretofore offered to deliver them to plaintiff and that plaintiff has refused and does now refuse to accept them.

WHEREFORE, having fully answered, the defendant prays that the bill of complaint herein be dismissed and that defendant recover his costs and disbursements.

(Unsigned.)

(Verified.)

(Filed May 13, 1915.) [17]

Replication.

Comes now Frank P. McKinney, receiver of the Olympia Bank & Trust Company, complainant, and replying to the answer of the defendant, denies, admits and alleges as follows, to wit:

I.

Replying to the first affirmative defense of the first cause of action of the defendant the complainant denies the same and each and every part thereof,

except as hereinbefore in the bill of complaint admitted, qualified or claimed.

II.

Replying to the second affirmative defense of the said first cause of action of the defendant, the complainant denies the same and each and every part thereof, except as hereinbefore in the bill of complaint admitted, qualified or claimed.

III.

Replying to the first affirmative defense of the second cause of action of the defendant, the complainant denies the same and each and every part thereof, except as hereinbefore in the bill of complaint admitted, qualified or claimed.

Wherefore complainant prays as hereinbefore in his bill of complaint.

TROY & STURDEVANT,
Attorneys for Complainant.

(Verified.)

(Filed Nov. 8, 1915.) [18]

Bill of Complaint of Intervenors.

To the Honorable Judge of the Above-entitled Court:

The above-named intervenors, C. S. Reinhart and C. Will Shaffer, stockholders of the Olympia Bank & Trust Company bring this, their Bill of Complaint, for themselves and for all other stockholders of said company, and for a cause of action allege:

I.

That the Olympia Bank & Trust Company was and is a corporation duly organized under the laws of the State of Washington for the purpose of con-

ducting a banking business under the [19] laws of said State of Washington, as a State bank, with its principal place of business at Olympia, Thurston County, Washington.

II.

That the above-named intervenors C. S. Reinhart and C. Will Shaffer, at all of the times since the organization and incorporation of said Olympia Bank and Trust Company were and now are stockholders in said Olympia Bank & Trust Company, said C. S. Reinhart being the owner of 15 shares therein, and said C. Will Shaffer being the owner of 10 shares therein; that your intervenors bring this action for themselves and all other stockholders of said Olympia Bank & Trust Company for the reason that all stockholders of said Olympia Bank & Trust Company have an identical interest in this suit, and for the further reason that the number of stockholders of said company is so numerous as to make it impracticable to bring them all before the Court in this action.

III.

That on the 29th day of September, 1914, such proceedings were had in the Superior Court of the State of Washington for Thurston County, in a certain cause entitled "State of Washington on the relation of W. V. Tanner, as Attorney General, Plaintiff, vs. The Olympia Bank & Trust Company, a Corporation, Defendant," No. 5628, that the said Olympia Bank & Trust Company was adjudged to be insolvent, and that on October 14, 1914, the above-named complainant, Frank P. McKinney was ap-

pointed receiver thereof, and that he has been since said date and ever since and now is the duly appointed, qualified and acting receiver of the said Olympia Bank & Trust Company.

IV.

That your intervenors and each of them have requested and demanded that said Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, bring the action herein set [20] forth, but that the said receiver of the Olympia Bank & Trust Company has refused so to do.

V.

That heretofore and prior to the said 29th day of September, 1914, the said United States National Bank was a corporation duly and regularly organized under the laws of the United States and was a national bank, engaged in the banking business, with its principal place of business at Centralia, Washington; that for some time prior to the adjudication of the Olympia Bank & Trust Company to be insolvent and the appointment of a receiver therefor, the said United States National Bank at Centralia, Washington, was insolvent and several days before said time it was placed in the hands of a receiver under the acts of Congress providing for the management and winding up of the affairs of insolvent banks, and that the defendant C. A. Snowden is the duly appointed, qualified and acting receiver of the said United States National Bank, a corporation, and the said A. R. Titlow has been substituted.

VI.

That your intervenors have procured permission

from the above-entitled court, and from the Superior Court for Thurston County, Washington, for leave to intervene herein and file this Bill of Complaint.

VII.

That during the months of August and September, 1914, one W. Dean Hays was cashier of the said Olympia Bank & Trust Company and the active managing head of said company, and one Charles S. Gilchrist was vice-president of the United States National Bank of Centralia and active managing head of said bank and that during all of the months of August and September the said United States National Bank of Centralia was insolvent and that the said Charles S. Gilchrist, during said months of August and September, 1914, knew that the said United States National [21] Bank of Centralia was in an insolvent condition; that during said month of August, 1914, the said Charles S. Gilchrist and the said United States National Bank of Centralia falsely and fraudulently represented and stated the financial condition of said United States National Bank of Centralia to said Olympia Bank & Trust Company and the officers thereof, and represented and stated that the said United States National Bank of Centralia was solvent when, in truth and in fact, said United States National Bank of Centralia was insolvent, as the said Charles S. Gilchrist and the said United States National Bank of Centralia well knew, which statements and representations were believed and taken as true by said Olympia Bank & Trust Company and its officers;

that said Olympia Bank & Trust Company was organized and incorporated during the month of August, 1914, the said W. Dean Hays being the active promoter and organizer thereof, said organization and incorporation being had at the request, instance and suggestion of the said Charles S. Gilchrist; that the prime purpose of the said Charles S. Gilchrist in obtaining said organization and incorporation of said Olympia Bank & Trust Company was to obtain for said United States National Bank of Centralia, which was then insolvent, all funds that would be deposited in the Olympia Bank & Trust Company after the organization and incorporation thereof; that said Charles S. Gilchrist and said W. Dean Hays entered into a secret agreement prior to the organization and incorporation of said Olympia Bank & Trust Company, which secret agreement was not disclosed to and was not known by any person interested in said Olympia Bank & Trust Company in any manner whatsoever as creditor, stockholder, or officer, by the terms of which secret agreement all property, notes, funds and cash deposited in said *said* Olympia Bank & Trust Company, after the organization and incorporation thereof, were to be remitted and deposited with said United States National Bank of Centralia; that by the terms of said secret agreement between [22] the said Charles S. Gilchrist and the said W. Dean Hays, said W. Dean Hays obtained a personal book credit with said United States National Bank of Centralia whereby said Olympia Bank & Trust Company was able to make such showing as to the

payment of its capital stock, as was required by the laws of the State of Washington in order that it might commence business in said State as a banking institution; that the said credit thus given the said W. Dean Hays was a book credit only and by the terms of said agreement between the said W. Dean Hays and the said Chas. S. Gilchrist, the funds represented by said credit were not subject to withdrawal by the said W. Dean Hays, or the said Olympia Bank & Trust Company; that the said secret agreement constituted a fraud on the rights of said Olympia Bank & Trust Company and the creditors, stockholders and officers thereof on account of the conditions herein alleged and on account of the insolvent condition of said United States National Bank of Centralia; that in furtherance and fulfillment of said fraudulent and secret agreement and by means of said false and fraudulent statements and representations as to the financial condition of said United States National Bank of Centralia, said United States National Bank of Centralia procured title to, and said Olympia Bank & Trust Company, through the said W. Dean Hays, as its managing head, deposited with said United States National Bank of Centralia, during said months of August and September, 1914, cash amounting to \$55,499.26 and certain promissory notes of various persons, having a total face value of \$48,000.00; that said United States National Bank of Centralia would not have obtained said property, or any part thereof, if said false and fraudulent representations as to its financial condition had not been made and relied upon by Olympia Bank & Trust Company and the

officers thereof, and that said United States National Bank of Centralia would not have obtained said property, or any part thereof, if said fraudulent and secret agreement herein set forth had not [23] been made, and that the title to said property was obtained by said United States National Bank of Centralia solely through fraud and by the use of said false and fraudulent representations and statements and said secret and fraudulent agreement.

VIII.

That subsequent to the time that said United States National Bank of Centralia obtained title to the property of the Olympia Bank & Trust Company, as herein set forth, and prior to the time that said United States National Bank was placed in the hands of a receiver, said United States National Bank of Centralia returned and paid to said Olympia Bank & Trust Company cash, and equivalent of cash, amounting to \$14,320, and that said United States National Bank of Centralia now has in its possession property of the Olympia Bank & Trust Company, as follows: Cash, \$41,169.26 and those certain promissory notes of various persons having a total face value of \$48,000, mentioned in the preceding paragraph, all of which property was obtained by said United States National Bank by use of fraud practiced on said Olympia Bank & Trust Company, as herein set forth.

WHEREFORE, your intervenors pray as follows, to wit:

1. That subpoenas issue to the above-named defendant and to the above-named complainant requiring each of them to appear in court and answer hereto.

2. That there be an accounting between said Olympia Bank & Trust Company and the receiver thereof and the said United States National Bank of Centralia and the receiver thereof, and that the cash balance found due said Olympia Bank & Trust Company from said United States National Bank of Centralia and all notes now in the possession of the receiver of said United States National Bank of Centralia, which were obtained from said Olympia Bank & Trust Company, and the whole thereof, be declared to be [24] held by said receiver of said United States National Bank of Centralia in trust for the receiver of said Olympia Bank & Trust Company, and that the said receiver of said United States National Bank of Centralia be ordered to deliver the same to the receiver of said Olympia Bank & Trust Company.

3. For their costs and disbursements herein and that the same be declared a preferred claim against said receiver of said United States National Bank of Centralia.

4. For such other and further relief as to the Court shall seem just.

THOS. L. O'LEARY,
Solicitor for Intervenors.

(Verified.)

(Filed May 17, 1915.) [25]

**Answer to Bill of Complaint of Intervenors C. S.
Reinhart and C. Will Shaffer.**

The defendant, A. R. Titlow, as receiver of the United States National Bank of Centralia, for his an-

swer to the bill of complaint of the intervenors C. S. Reinhart and C. Will Shaffer, alleges and denies as follows:

I.

Alleges that the complaint in intervention does not state facts sufficient to constitute a cause of action in equity or at all and moves that it be dismissed.

II.

Referring to paragraph 2, defendant says that he is without knowledge as to whether the intervenors or either of them were or are stockholders of the Olympia Bank & Trust Company, and is without knowledge as to the number of shares which they or either of them own or claim to own. Denies that all or any of the stockholders of the Olympia Bank & Trust Company have an identical or any interest in this suit, and denies that the number of stockholders of said company is so numerous as to make it impracticable to bring them [26] all before the Court in this action.

III.

Referring to paragraph 3 and 4, defendant says that he is without knowledge as to any of the matters set forth in those paragraphs or either of them.

IV.

Referring to paragraph 5, defendant admits that the United States National Bank was and is a corporation duly and regularly organized under the laws of the United States, and was and is a national bank engaged in the banking business, with its principal place of business at Centralia, Washington. Denies that the United States National Bank was insolvent at any

time prior to September 21, 1914, or that it was placed in the hands of a receiver at any time prior to that date. Denies that C. A. Snowden is the duly appointed, qualified and acting receiver of the United States National Bank, but admits that A. R. Titlow has been substituted as such receiver, and alleges that A. R. Titlow is now the duly appointed, qualified and acting receiver of the United States National Bank.

V.

Referring to paragraph 6, defendant says that he is without knowledge as to any of the matters therein set forth.

VI.

Referring to paragraph 7, admits that during the months of August and September, 1914, one W. Dean Hayes was cashier of the Olympia Bank & Trust Company and the active managing head of that company, and that Charles S. Gilchrist was vice-president of the United States National Bank of Centralia and active managing head of [27] that bank. Denies that during all of the months of August and September, or at any time during those months prior to September 21, 1914, the United States National Bank of Centralia was insolvent, and denies that Charles S. Gilchrist, during the months of August and September, 1914, at any time prior to September 21, 1914, knew that the United States National Bank was in an insolvent condition. Denies that during the month of August, 1914, or at any time, Charles S. Gilchrist and the United States National Bank, or either of them, falsely or fraudulently or otherwise misrepresented or misstated the the financial condition of the United

States National Bank to the Olympia Bank or the officers thereof; denies that Charles S. Gilchrist or the United States National Bank made any representations of any sort whatever to the Olympia Bank & Trust Company as to the solvency of the United States National Bank, but alleges the fact to be, if such representations were made, that they were true in fact. Denies that Charles S. Gilchrist or the United States National Bank, or either of them, knew of the insolvency of the United States National Bank, and denies that such condition existed, prior to September 21, 1914. Admits that W. Dean Hayes was the active promoter and organizer of the Olympia Bank & Trust Company, but denies that the organization or incorporation of that company was had at the request, instance or suggestion of Charles S. Gilchrist. Denies that the purpose of such organization was to obtain for the United States National Bank all or any funds that might be deposited in the Olympia Bank & Trust Company. Denies that Charles S. Gilchrist and W. Dean Hayes entered into a secret or any agreement prior to the organization and incorporation of the Olympia Bank & Trust Company or at any time, by the terms of which all or any property, notes, funds, or cash deposited in the Olympia Bank & Trust Company were to be remitted to or deposited with the United States National Bank of Centralia. Denies that by the terms of such agreement or otherwise W. Dean Hayes obtained a [28] personal book credit with the United States National Bank, whereby the Olympia Bank was able to make such showing as to the payment of its capital stock as the

laws of the State of Washington required. Denies that if any credit were given W. Dean Hayes it was a book credit only and that by the terms of the agreement the funds represented by said credit were not subject to withdrawal by Hayes or the Olympia Bank, and alleges that any deposits which were made by the Olympia Bank & Trust Company with the United States National Bank were made in the ordinary course of banking business, and denies that there was any secret agreement or fraud of any nature whatsoever by United States National Bank or that there was any other arrangement existing between the two banks than usually exists between correspondent banks. Denies that the Olympia Bank & Trust Company, during the months of August and September, 1914, or at any time, deposited with the United States National Bank cash amounting to the sum of \$55,499.26, or any sum in excess of \$38,498.91. Admits that certain promissory notes of various persons, of the total face value of \$48,000, were deposited by the Olympia Bank with the United States National Bank. Denies that any false or fraudulent representations on the part of the United States National Bank were made to the Olympia Bank or its officers or in any way caused or induced such deposit or any part thereof. Alleges that the credit of \$48,000 obtained by depositing said notes, was obtained by fraud by a conspiracy of plaintiff's bank with an officer of United States National Bank.

VII.

Referring to paragraph 8, denies that the United States National Bank of Centralia returned and paid

to the Olympia Bank cash or its equivalent only in the sum of \$14,320, and alleges the fact to be that the United States National Bank returned and paid to the Olympia Bank in cash or its equivalent during the months of August and September, 1914, the total sum of \$58,550. Denies that the United States National Bank now has in its possession property of the Olympia Bank & Trust Company in the sum of \$41,-169.26, or [29] any part thereof; denies that it has certain promissory notes of various persons obtained from the Olympia Bank having a total face value of \$48,000, or any face value in excess of the sum of \$11,-450. Admits that the United States National Bank of Centralia is indebted to the Olympia Bank & Trust Company in the sum of \$16,498.91 and no more, but denies that that sum or any part thereof is held in trust by the defendant, and alleges that the receiver of the Olympia Bank & Trust Company is entitled to a general claim only for that amount. As to the \$11,450 in notes hereinbefore mentioned, the defendant says that he is willing to deliver those notes and each of them to the receiver of the Olympia Bank & Trust Company upon demand and proper credit therefor being given.

Defendant, further answering, and as a first affirmative defense to the bill of complaint of intervenors C. S. Reinhart and C. Will Shaffer says:

That said intervenors do not come into court with clean hands and have no standing in a court of equity for the reason that they have not paid, either in whole or in part, for any of the stock which they claim to own in Olympia Bank & Trust Company, and that all their claim, and that of each of them to stock owner-

ship arises through a wrongful and illegal plan, by which the intervenors and the other persons claiming to be stockholders of the Olympia Bank & Trust Company attempted to organize that bank without the payment of its capital stock, as required by the laws of the state of Washington, before the same commenced business.

For a further and second affirmative defense to the bill of complaint of the intervenors herein, defendant says: That said intervenors and each of them are without standing to maintain their intervening bill of complaint herein for the reason [30] that their attempted organization of the Olympia Bank & Trust Company was based and founded upon an illegal plan, whereby the intervenors and their associates, being the persons now claiming to be stockholders in the Olympia Bank & Trust Company, attempted to organize the Olympia Bank & Trust Company for the sole purpose of forming a convenient means whereby they should deposit with themselves as a bank and for their private profit the trust funds of the State of Washington in their custody and for the purpose of creating on the part of the intervenor Reinhart in his office which he then held of clerk of the Supreme Court of the State of Washington and on the part of the intervenor Shaffer in his office which he then held of librarian of the State of Washington, and of the other public officers among whom the stock of said bank was to be and was in fact divided, a financial interest inconsistent with the public duty of said Reinhart and said Shaffer, and inconsistent with the public duty of the other public officers and custodians of

public funds of the State of Washington who by the terms of the plan under which said bank was organized, were to occupy the position and enjoy the privileges of stock ownership in that bank.

WHEREFORE defendant prays the dismissal of the intervenors' complaint and for his costs and disbursements herein.

R. P. OLDHAM,

R. C. GOODALE,

Attorneys for Defendants.

Office and Postoffice address: 1408 Hoge Building,
Seattle, King County, Washington.

(Verified.) [31]

(Filed Dec. 15, 1915.)

Decree.

This cause came on for hearing on the 14th day of December, 1915, and proceeded from day to day with sundry adjournments until the 31st day of December, 1915, and as argued by counsel, and thereupon, upon consideration thereof, it was and is now hereby

ORDERED, ADJUDGED and DECREED as follows, viz:

1. That the claim of plaintiff, in the sum of \$36,550, as set forth in plaintiff's first cause of action herein, be and it is hereby denied and dismissed with prejudice.

2. That the claim of plaintiff, in the sum of \$10,000, as set forth in plaintiff's second cause of action, be and the same is hereby denied, disallowed and dismissed with prejudice.

3. That the claim of plaintiff in *the of* \$9,5000, set forth in plaintiff's third cause of action, be and the same is hereby allowed and established in favor of plaintiff and against defendant as receiver.

4. That the claims asserted in behalf of the intervenors be and they are hereby dismissed and denied with prejudice, except with regard to the return of certain notes aggregating the face value of \$11,450, described as follows:

Note of F. G. Blakeslee for.....\$1000.

Note of W. A. Weller for.....\$1100.

Note of C. Will Shaffer.....\$1100.

Note of C. S. Reinhart.....\$1650.

Note of Chas. E. Hewitt.....\$1100.

..Note of I. M. Howell\$5500.

which said notes were tendered to plaintiff in open court by defendant, and that said notes, if not accepted by plaintiff within ten days after the signing of this decree, be deposited in the registry of this court for plaintiff's use. [32]

5. That the credit of \$48,000 of which the \$36,500 set forth in paragraph 1 of this decree forms a part alleged to have been certified in behalf of the United States National Bank of Centralia in favor of Olympia Bank and Trust Company, be and the same is hereby canceled and held void.

6. That all claims on the part of plaintiff and of intervenors to a preferred or prior claim against the assets in the hands of the defendant receiver be and the same are hereby denied with prejudice.

7. That upon the accounting between the parties, plaintiff be allowed a general claim against defendant

as receiver in the sum of \$25,998.91, and no more, the same to receive from time to time pro rata with the other proved and allowed claims against the United States National Bank of Centralia such dividends as may be declared thereon.

8. That the costs in this case be paid as follows: Each party bear its own costs.

9. That both the intervenors and all the stockholders of the Olympia Bank & Trust Company, except Hays, were acting in good faith and were guilty of no fraud in the organization of the Olympia Bank & Trust Company, or in any dealings by and between W. Dean Hays and the United States National Bank, or with the officers thereof.

Done in open court at the July term of this court, this 3d day of January, 1916, at 10 o'clock in the forenoon.

EDWARD E. CUSHMAN,
U. S. District Judge.

(Filed Jan. 31, 1916.) [33]

**Petition for Appeal Filed the 27th Day of June, 1916,
in the District Court of the United States for the
Western District of Washington, Southern Di-
vision.**

TO THE HONORABLE EDWARD E. CUSHMAN,
District Judge of the Above-entitled Court:

The above-named complainant, feeling himself aggrieved by the decree made and entered in this cause on the 31st day of January, 1916, does hereby appeal from the said decree to the court of appeals for the

Ninth Circuit for the reasons specified in the Assignment of Errors, which is filed herewith, and he prays that appeal be allowed and that citation issue, as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

And your petitioners further pray that the proper order touching the security to be required by him to perfect [34] appeal be made.

P. M. TROY,
R. F. STURDEVANT,
Solicitors for Complainants.

The Petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of \$500.

EDWARD E. CUSHMAN,
United States District Judge.

(Filed June 27, 1916.) [35]

Assignment of Errors.

And now, on this 27th day of June, 1916, came the complainant by its solicitor, P. M. Troy, of Troy & Sturdevant, and says, that the decree entered in the above cause on the 31st day of January, 1916, is erroneous and unjust to complainant:

First. That the claim of complainant in the sum of \$36,550 as set forth in complainant's first cause of action herein was not allowed the complainant, but was denied and dismissed with prejudice.

Second. That the claim of complainant in the sum of \$10,000 as set forth in complainant's second cause of action was not allowed this complainant in said decree but was denied and dismissed with prejudice.

Third. That the complainant was required to accept the return of certain notes aggregating face value \$11,450, described as follows:

Note of F. G. Blakeslee.....\$1,000.00

Note of W. A. Weller..... 1,100.00

Note of C. Will Shaffer..... 1,100.00

[36]

Note of C. S. Reinhart.....\$1,650.00

Note of Chas. E. Hewitt..... 1,100.00

Note of I. M. Howell..... 5,500.00

at suit of the intervenors, when the said notes should have been retained as the property of defendants, and the plaintiff permitted to recover according to the demand of his complaint.

Fourth. That the credit of \$48,000, of which the \$36,550 set forth in the complainant's first cause of action formed a **part, certified in favor of the Olympia Bank & Trust Company** was cancelled and held void, but should have been allowed the complainant.

Fifth. That all of the claims on the part of the complainant and intervenors to a preferred and prior claim against the assets in the hands of the defendant receiver were denied with prejudice, but should have been allowed.

Sixth. That the complainant was allowed a general claim against the defendant as receiver in the sum of \$25,998.91 and no more on the accounting

herein, when the complainant should have been allowed the sum of \$83,998.91.

Seventh. That complainant was required to pay his own costs herein, and his costs were not allowed.

WHEREFORE complainant prays that the said decree be reversed and the District Court directed to enter judgment as prayed for in the complainant's Bill of Complaint in the full sum of \$83,998.91.

P. M. TROY,

R. F. STURDEVANT,

Solicitors for Complainant.

(Filed June 27, 1916.) [37]

State of Washington,

County of Thurston,—ss.

On this 28th day of June, A. D. 1916, personally appeared before me the undersigned authority, P. M. Troy, who, being duly sworn says: That he delivered a copy of the within citation to Oldham & Goodale, Solicitors of the United States National Bank of Centralia, a corporation, and A. R. Titlow, as receiver of the United States National Bank of Centralia, on the 27th day of June, 1916.

P. M. TROY.

Sworn to before me this 28th day of June, A. D. 1916.

[Seal]

R. F. STURDEVANT,

Notary Public in and for the State of Washington,

Residing at Olympia, therein. [38]

Citation and Motion of Appeal.

United States of America,

To United States National Bank of Centralia, a Corporation and A. R. Titlow, as Receiver of the United States National Bank of Centralia, Greeting:

You are hereby notified that in a certain cause in equity in the United States District Court for the Western District of Washington, Southern Division, wherein Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, a corporation, is complainant, and United States National Bank of Centralia, a corporation, and A. R. Titlow, as receiver of the United States National Bank of Centralia, are defendants, an appeal has been allowed the complainant therein to the United States Circuit Court of Appeals, Ninth Circuit? You are hereby cited and admonished to be and appear in said court at the City of San Francisco, State of California, 30 days after the date of this citation to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy *justice the parties* in that behalf.

WITNESS the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court, Western District of Washington, Southern Division, this 27th day of June, A. D. 1916.

[Seal]

EDWARD E. CUSHMAN,
United States District Judge.

Receipt of a copy of the foregoing Notice of Appeal and Citation admitted by receipt of copy, this 27th of June, 1916, at Seattle, Wash.

R. P. OLDHAM,

R. C. GOODALE,

Solicitors for Defendant.

(Filed June 29, 1916.) [39]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Frank P. McKinney, as principal, and Fidelity & Deposit Company of Maryland, a corporation, organized and existing under and by virtue of the laws of Maryland, as surety acknowledge ourselves to be jointly indebted to the United States National Bank of Centralia, a corporation, and A. R. Titlow, as receiver of the United States National Bank of Centralia, defendants in the above cause in the sum of \$500, conditioned that,

WHEREAS, on the 31st day of January, A. D. 1916, in the District Court of the United States for the Western District of Washington, Southern Division, in a suit pending in that court wherein Frank P. McKinney as receiver of the Olympia Bank & Trust Company, a corporation was complainant, and the United States National Bank of Centralia, a corporation and A. R. Titlow as receiver of the United States National Bank of Centralia was defendant, numbered in the equity docket as 32-E, a decree was rendered against the said Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, and the said Frank P. McKinney as receiver of the

Olympia Bank & Trust Company, a corporation having obtained an appeal to the United States Circuit Court of Appeals, Ninth Circuit, and filed a copy thereof in the office of the clerk of the court to reverse the said decree and a citation directed to the said United States National Bank of Centralia, a corporation and A. R. Titlow, as receiver of the United States National Bank of Centralia, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco, in the State of California, on the 27th day of July, A. D. 1916, next.

Now, if the said Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, a corporation, shall prosecute his appeal to effect and answer all costs, if he failed to make his plea [40] good, then the above obligation to be void, else to remain in full force and virtue.

FRANK P. McKINNEY,
As Receiver of the Olympia Bank & Trust Company,
a Corporation,

Principal.
FIDELITY & DEPOSIT COMPANY OF
MARYLAND.

[Seal].

By H. T. HANSEN,
Attorney in Fact.

Attest: _____.

Approved this 30 day of June, 1916.

EDWARD E. CUSHMAN,
United States District Judge.

(Filed July 1, 1916.) [41]

Statement of Facts.

Come now the complainants and intervenors in cause No. 32-E and the complainant in cause No. 50-E and propose the annexed condensed narrative statement of facts herein, and the following exhibits of the complainant in Cause No. 32-E: 1, 2, 3, 4, 5 and 6; and the following exhibits of the intervenors in Cause No. 32-E, to wit: 1, 2, 3, 4, 5, 6 and 7.

[42]

And the following exhibits of the defendant in Cause No. 32-E: "A," "B," "C," "D," "E" and "F."

And the following exhibits of the complainant in Cause No. 50-E, to wit: 1, 2, 3, 4 and 5.

And the following exhibit by the defendant in Cause No. 50-E:

And propose the same as a statement of facts herein.

P. M. TROY,

R. F. STURDEVANT,

Solicitors for Complainant in Cause No. 32-E.

C. WILL SHAFFER,

C. S. REINHART,

Intervenors. [42½]

FRANK C. OWINGS,

Solicitor for Complainant in Cause No. 50-E.

Service of the foregoing proposed statement of facts by receipt of a copy thereof admitted this 16th day of September, 1916.

R. P. OLDHAM,
R. C. GOODALE,

Solicitors for Defendant in Causes No. 32-E and
50-E. [43]

Be it remembered that this cause came on for trial on the 14th day of December, 1915, before Honorable Edward E. Cushman, judge thereof, the plaintiff appearing by his counsel, P. M. Troy, of Troy & Sturdevant, and the defendant appearing by R. E. Goodale of Oldham & Goodale, and the intervenors appearing by Thomas L. O'Leary and Thomas M. Vance, whereupon the following proceedings took place:

By Mr. GOODALE.—If your Honor please, counsel engaged in this case have had some considerable hesitation as to whether there would be any necessity of proceeding with any matter to the Court this afternoon in view of discussion of matters which might prevent the necessity of a trial, but we have not been able to arrive at any result in the discussion whatever, and I am now obliged to take up this case first, by presenting a motion to consolidate the causes or bring in an additional party. [44] On the sixth of this month, this current month, the State bank, the receiver of the State Bank of Tenino, commenced an action for an accounting against the receiver of the United States National Bank of Centralia. One of the three causes of action embraced in the bill of complaint in the case set for trial

to-day, the case of the Olympia Bank & Trust Company, through its receiver, against the United States National Bank of Centralia, through its receiver, concerns certain items aggregating Ten Thousand Dollars, alleged to have been sent by the Olympia Bank & Trust Company to the Tenino Bank, and appearing on the records of the United States National Bank. That is in the bill in equity against Mr. Titlow, as receiver of the United States National Bank. The plaintiff in this case, McKinney, as receiver, against Titlow, demands credit to the United States National Bank for the transfer which he says the Olympia Bank made to the Tenino bank at our request. Since this suit was commenced, and since it was set, a new action has been commenced, as I have already stated, by the State Bank of Tenino for an accounting on its part involving that same transaction. It is apparent that if this suit should be tried separate from this suit of the Tenino bank against us, it is possible that the evidence should be different and some facts brought out in one and not in the other, and it is possible that a judgment might be rendered charging us with that item as having been sent to the Tenino bank, although among the other hearing of the Tenino bank against us the Tenino bank might conclusively satisfy this Court that this money never reached the Tenino bank, in which case we would be charged with an item which if charged with it at all they would necessarily have to recover from the Tenino bank and be unable to make this recovery. We think all three parties ought to be before the Court at the same

time. I understand the receiver of the Tenino bank is present in court here to-day, [45] but is not represented by his counsel and will not be able to proceed this afternoon.

By the COURT.—Is your motion opposed?

By Mr. GOODALE.—I am not advised, but I understand that counsel cannot agree.

By the COURT.—When was this case, the Tenino case, started?

By Mr. GOODALE.—On the sixth of the current month.

By Mr. TROY.—This case that is set for trial to-day was started last March, and before discussing the motion I would like to suggest to the Court that there are two causes here, there is one on the part of the receiver and one on the part of the intervenor. I represented the receiver, and Mr. O'Leary the intervenors. The issues are so interwoven together that the case of the receiver and the intervenors must necessarily be presented together, and I desire to ask that General Vance be associated as counsel for both the receiver and the intervenors also. That is correct, isn't it, Mr. O'Leary?

By Mr. O'LEARY.—Yes, sir.

By the COURT.—The record may so show. There is no controversy between the receiver and the intervenor in any case.

By Mr. TROY.—None whatever. Now, in regard to this motion that has just been served on us, I know nothing about the issues between the Tenino State Bank and the Centralia Bank, rather the two

receivers. As I say, the cause has been pending for a long time and we have witnesses that have come from a considerable distance to be present at this trial, and it seems to me that the issue to be tried out here is merely the question between the Olympia Bank & Trust Company and the receiver and between the United States National Bank and its receiver. I can well understand how it might be that we would remit [46] money for the Tenino bank at the request of the Centralia bank and would be entitled to credit for it; and the question with reference to the rights between the Centralia bank and the Tenino bank would be a different question entirely. We are either entitled to this credit or we are not.

By the COURT.—Mr. Goodale, how about the issues in the Tenino case; are they made up?

By Mr. GOODALE.—The complaint asks for an accounting, the issue involves all items which we are entitled to as credited against the Tenino bank.

By the COURT.—You may take an order on the receiver of the Tenino bank to show cause why the matter should not all be proceeded with at that time, to-morrow at ten o'clock.

Whereupon an adjournment was taken until December 15th, at 10 o'clock A. M.

Upon reconvening, pursuant to adjournment, the following proceedings were had.

By Mr. OWINGS.—If your Honor please, we are in this situation, speaking for the State Bank of Tenino. Our subpoena was served something like ten or twelve days ago, I think, and there has been

no answer filed. The issues are not made up and we do not know what we will be called upon to prove. We are anxious to proceed with this matter and would like to try it with the other case, but unless we can agree as to—for instance, there is a formal allegation set out here, such as the incorporation of the State Bank of Tenino, the appointment of the receiver, and all that formal proof is necessary as to my case. I got word of this last night about half-past five o'clock. I was discussing this with counsel for Mr. Titlow when your Honor came in. I think that possibly we can agree to these things, that is, if he will agree to those allegations.

By Mr. GOODALE.—I think we can agree on the mere formal allegations. I have not looked through the bill in the clerk's office. If it be stipulated that we are considered as denying all knowledge [47] and information sufficient to form a belief as to any of the allegations contained in paragraph five of the bill, and as denying the allegations contained in paragraph six, I think we can agree on the formal allegations.

By Mr. OWINGS.—You will not deny the filing of our claim with the receiver as set out in paragraph five, will you?

By Mr. GOODALE.—It is a fact, isn't it, Mr. Titlow, that the claim was filed with you?

By Mr. TITLOW.—I think it was. To be frank with you, I don't remember, but I think it was.

By Mr. OWINGS.—Paragraph six, the paragraph that you deny, alleges that after an investigation of the accounts and that sort of thing, that the amount

of the claim is four thousand nine hundred and fifty-three dollars and eight cents, so that the issue here is as to whether or not we are entitled to that amount, and of course we have asked for an accounting, so that is subject to a correction, but you admit the filing of the claim.

By Mr. GOODALE.—We admit the filing of the claim, but allege that it is for a slightly different amount than that alleged by you. I will then modify the denials that we suggest that it be stipulated in connection with this bill so as to read as follows:

“Defendants deny any allegations, any knowledge or information sufficient to form a belief as to whether the books of the State Bank of Tenino showed a balance in favor of the State Bank of Tenino, and against the United States National Bank of Centralia in the sum of nine thousand seven hundred and thirty-nine dollars and thirty-six cents, as alleged by the plaintiff, or any other sum. Defendants admit that the plaintiff filed a claim with the defendant receiver, but denies that any such claim was filed in the sum alleged and allege that in fact such claim was filed in the sum of nine thousand [48] four hundred and forty-three dollars and eight cents. Defendants deny each and every allegation contained in paragraph six of plaintiff’s bill.

By Mr. OWINGS.—Now, with the admission of counsel, we are ready to proceed, if we may be permitted to subpoena, if it appears necessary, two witnesses. One of them is Mr. Isaac Blumauer, the other one an official of the Puget Sound National

Bank. I say frankly to the Court that I do not feel at this time that we will need them with the witnesses that are here, but I can see that this is an action in accounting and I can see where certain issues might arise whereby we would have to have those two witnesses in attendance.

By Mr. GOODALE.—I have no objection to a continuance being granted to secure such witnesses, with the understanding that we may have a similar privilege.

By the COURT.—On the trial of this case it may be understood that a jury coming in to-morrow that if any of these defendants plead not guilty, that this trial will have to be interrupted and take its day after the jury has been completed. With that understanding we will proceed with the trial then.

By Mr. GOODALE.—Before the case is taken up by the plaintiff, I desire, on behalf of the defendant in the action of McKinney against Snowden as receiver and Titlow substituted as receiver, to demand that this cause be treated as a law action and especially to demand a jury trial separately as to the first cause of action stated in the bill, and the second cause of action stated in the bill and separately as to the third cause of action as stated in the bill.

(Argument.)

By the COURT.—The motion for a jury will be denied.

By Mr. GOODALE.—Exception. [49]

Now, before proceeding with this trial, I desire to state to the Court that Judge Dysart, a trustee and officer of the defendant United States National Bank,

is, I am informed, ill and unable to be here. Whether his condition is such that it is likely he can be here to-morrow, I do not know, so there is a necessity of postponement, with the understanding that unless the case be kept open in order to hear his testimony, we would be compelled to move for postponement. Otherwise, we have no objection to proceeding. You would prefer that to a postponement until the witness reaches here, would you?

By the COURT.—I think that is the understanding. You would have that right. I suggest, Mr. Goodale, that you file your answer to the Tenino suit sometime during the day, so there can be no misunderstanding about what your answer is.

By Mr. VANCE.—I understand that counsel will consent that we may be taken as denying any affirmative matter contained in their answer.

By Mr. GOODALE.—I do.

By Mr. TROY.—I think your Honor has gathered the nature of the action. I don't think there is any need of any further statement from the standpoint of the receiver's case. Would your Honor like a statement in full of the intervenor's case?

By the COURT.—I don't exactly understand the position of the intervenor here.

OPENING STATEMENT BY MR. O'LEARY ON BEHALF OF THE INTERVENORS.

At the close of Mr. O'Leary's statement on behalf of the intervenors, the following proceedings were had:

By Mr. GOODALE.—We move now, your Honor, that the intervening bill of complaint of the inter-

venors Shaffer and Reinhart et al. be dismissed as having no standing in this court in this action. [50] If they have any right or remedy aside from the action of the receiver on their behalf and on behalf of the persons asserted in the complaint to be stockholders, then I think it should be brought in an action for the protection of the rights of the Olympia Bank & Trust Company.

By the COURT.—The motion will be denied. I think such a motion should be made primarily. The final ruling on your motion will be reserved and decided along with the other issues of the case. I would think, though, that the proper course for the intervenors to have pursued would have been to have taken an order of the Court to instruct the receiver to bring such action as the intervenors are attempting to bring here. However, the motion may be denied at this time.

By Mr. GOODALE.—Exception.

By Mr. TROY.—At this time we offered in evidence a certified copy of the articles of incorporation of the Olympia Bank & Trust Company, also a certified copy of the charter of the Olympia Bank & Trust Company.

By the COURT.—They may be admitted.

(Marked Plaintiff's Exhibits 1 and 2.)

Testimony of Frank P. McKinney, for Plaintiff.

FRANK P. McKINNEY was called and sworn as a witness on behalf of plaintiff, and in answer to interrogatories propounded to him by P. M. Troy of the attorneys for plaintiff testified as follows:

My name is Frank P. McKinney; am receiver of

(Testimony of Frank P. McKinney.)

the Olympia Bank & Trust Company and have possession of its books. Obtained the same on October 14, 1914. I made up a statement of the debits and credits between the Olympia Bank & Trust Company and the United States National Bank of Centralia, from the items, letters and receipts, etc., that passed between the two banks. The statement I made contains the debits on the one side and the credits on the other. Witness reads the debits and credits over which there is no controversy, as follows: [51]

A. Two thousand dollars, five thousand dollars—I will read the date. This is in August, 1914, August eighteenth, two thousand dollars, remitted to Seattle; August thirty-first, remitted to Tacoma five thousand dollars; August twenty-fourth, remitted to Seattle three thousand nine hundred and seventy-five dollars; and on the 24th remittance to the United States National a hundred and sixty dollars and eight cents, and again two hundred and fifty-five dollars and ninety-five cents, and again three hundred and fifty-eight dollars and ten cents. August twenty-fifth, remittance of twelve thousand five hundred dollars; August twenty-sixth, a remittance of a hundred and forty-seven dollars and twenty-five cents; August twenty-seventh, a remittance of one hundred and forty-seven dollars, and on the twenty-seventh again remittance to Seattle two thousand dollars; August twenty-eighth, two hundred and sixteen dollars and sixty cents; August twenty-ninth, remittance of fifty-two dollars; August thirty-first, tele-

(Testimony of Frank P. McKinney.)

graphic transfer to Tacoma two thousand dollars, and on the thirty-first, remittance fifty-six dollars and fifty cents; September first, ninety-four dollars and sixty-five cents and on the first again remittance of three hundred and thirty-eight dollars thirty cents; September third, remittance to Tacoma four thousand dollars; September fourth, three hundred and seventy-seven dollars and seventeen cents, and September tenth, remittance to Seattle, five thousand dollars. That is the items on the debit side.

Q. Over which there is no controversy? A. No.

Q. Now, I wish you would read on the credit side the items concerning which there is no controversy, after consultation with counsel.

A. August nineteenth, 1914, account, credit account, two thousand five hundred dollars; August twenty-fifth, remittance to Seattle [52] one thousand dollars; September third, draft of one thousand dollars; September seventh, a draft of three thousand dollars; September fourteenth, a draft of five thousand dollars.

(Witness proceeds:) With reference to the four items on the credit side and the five items on the debit side over which there is no dispute. One is a thirty-five cent item over which the time of the Court will not be consumed. The first sheet in this book (refers to book) is a statement made on October 20th, 1914, by the receiver of the United States National Bank to me as receiver of the Olympia Bank & Trust Co., made from the United States National books of account between the two banks. The items

(Testimony of Frank P. McKinney.)

on the credit side of the statement we have just read, about which there is no controversy correspond with the items in the statement of the receiver of the United States National Bank.

There is a forty-eight thousand dollar item shown on the credit side of the statement made by the United States National Bank which does not appear upon the statement made by me from the books of the Olympia Bank & Trust Co. The debit and credit side of the statement made by me as receiver and by the receiver of the United States National Bank are inverse. The statement of the United States National Bank's receiver credits the Olympia Bank & Trust Company with forty-eight thousand dollars not shown by the books of the Olympia Bank & Trust Company and represents an item that was not read in the statement that I read a while ago. The items in the statement of the receiver of the United States National Bank that go to make up the fifty-five thousand dollars not included in my statement are as follows: August 20, remittance to Seattle, \$2,000; August 20th, remittance \$48,000, and August 21, remittance to Tacoma, \$5,000, making up the \$55,000. (It is admitted by Mr. Troy of counsel for plaintiff that there is an error in our statement to the extent of seven thousand dollars, and that our claim is only for \$48,000 [53] with reference to these items. And that instead of our claim being as per Mr. McKinney's statement of \$55,000, it should be for \$48,000, on these particular items.)

(Mr. McKinney proceeding:) There are three

(Testimony of Frank P. McKinney.)

items in my statement which are against the United States National Bank that do not appear upon the statement furnished me by its receiver, to wit: September 12, remittance to Seattle for Tenino, \$6,000; September 15, remittance to Seattle for Tenino, \$2,000; September 18, coin to Tenino \$2,000. The explanation of these last three items that I find in the book of entries is as follows: Relating to the \$6,000-item, the Olympia Bank & Trust Company charged the United States National Bank of Centralia with remittance to Seattle of \$6,000. The entries I have on this I found among the record. A letter from the Dexter Horton National Bank dated September 1, to the Olympia Bank & Trust Co. "Have credited to the State Bank of Tenino, Washington, and enclose our receipt herewith. Yours truly, C. E. Burnside, Assistant Cashier."

There is also a receipt from the First National Bank of Seattle showing that it received from the Dexter Horton National Bank, which read as follows: "Seattle, Washington, September 12, 1914. Received from the Dexter Horton National Bank for credit of the Tenino Bank \$6,000 as per telegram from Olympia Bank & Trust Company, Olympia." This was signed by the cashier of the First National Bank. Then there is a memoranda check containing the following:

"Dexter Horton National Bank, September 12, 1914. Pay First National Bank, Seattle, \$6,000 for State Bank of Tenino, per phone by J. C. N. Charge

Olympia Bank & Trust Company \$6,000." That is the memoranda charge slip from the Dexter Horton National Bank, and on September 12, 1914, the Olympia Bank & Trust Company, in Mr. Hays' writing debits Centralia, remittance to Seattle, for Tenino, \$6,000. Mr. Hays was cashier of the Olympia Bank & Trust Company. (Debits offered in evidence and introduced as Plaintiff's Exhibit 3.)

[54] The \$6,000 is charged in the cash-book of the Olympia Bank & Trust Company against the United States National Bank, the cash-book being the book of original entries. As to the \$2,000, there is a draft drawn to the Olympia Bank & Trust Company on one of the regular blanks of the Dexter Horton National Bank of Seattle, sent in about September 15, 1914, made to the First National Bank of Seattle, by Mr. Cavanaugh, who was assistant cashier of the Olympia Bank & Trust Company. This is a copy of letter of September 14, 1914.

"First National Bank,
Seattle, Washington.

Gentlemen:

In compliance with your telegraphic communication I am enclosing credit for \$2,000.00 to the State Bank of Tenino."

Yours truly,

Signed by the cashier.

Also a letter on the letterhead of the First National Bank of Seattle, dated September 15, 1915, as follows:

(Testimony of Frank P. McKinney.)

“Olympia Bank & Trust Company,
Olympia, Washington.

Gentlemen:

We hereby acknowledge receipt of \$2,000.00 which we have placed to the credit of the State Bank of Tenino.

Yours truly,

C. H. HARTWELL,
Assistant Cashier.”

There is an entry on the cash-book of the Olympia Bank & Trust Company charging this \$2,000 against the United States National Bank of Centralia. The next item, September 18, is a charge in the cash-book against the United States National Bank of Centralia as “Coin to Tenino.” The items in the cash-book are as follows:

September 12, United States National Bank, Centralia, remittance to Seattle, \$6,000. The next is September 15, United States National Bank of Centralia, remittance to Seattle for Tenino \$2,000. And, on September 18, “United States National Bank of Centralia, account of Tenino, \$2,000.”

Referring to the statement furnished to the receiver of the United States National Bank there is a charge of \$9,500. There is no such record on the books of the Olympia Bank & Trust Company. [55] The date of the entry is September 4, 1914, \$9,500.

(By Mr. TROY. In using this statement, the statement of the receiver of the United States National Bank, we want the Court to understand that we are not using it with the understanding that we are bound

(Testimony of Frank P. McKinney.)

by it. It only offers a basis of a statement between the two banks.)

(Mr. McKinney continuing.) After my appointment as receiver, I went in my official capacity to Centralia with reference to the affairs between the two banks. At that time the receiver of the United States National Bank, Mr. Chapman said that this charge related to what are called the Blumauer notes for \$9,500, and the receiver of the United States National Bank said that the notes were there in the possession of him as receiver, Mr. Chapman, of the United States National Bank. No Blumauer notes have ever been in my possession since I have been receiver of the Olympia Bank & Trust Company, and if that item represented a note or notes, they were never in my possession. There are also two other items on the debit side of the statement furnished by the receiver of the United States National Bank, which were probably not shown by the books of the Olympia Bank & Trust Company, one item being \$12,500, and another item \$24,050, that do not appear upon the books of the Olympia Bank & Trust Company. On August 31, 1914, there is an entry on the debit side of the statement from the receiver of the United States National Bank of remittance of \$12,500, and on September 5, 1914, on the same statement a draft of \$24,050. These do not appear any place on the books of the Olympia Bank & Trust Company. The books of the Olympia Bank & Trust Company show no account whatsoever with the Blumauers. In

(Testimony of Frank P. McKinney.)

passing my attention is directed to paragraph 2 of the answer to the third cause of action by the defendant in this suit, where the defendant mentions a note of T. H. McClafferty for \$2500, and a note of the Blumauer Logging Company for \$3500, and also a note of the Blumauer [56] Lumber Company for \$3500 and states that no such notes have ever been in my *position*, and that there was never any account on the books of the Olympia Bank & Trust Company of these items. Nor is there any record of the two remittances shown on the statement of the receiver of the United States National Bank, one dated August 31, for \$12,500 and one September 15, 1914 for \$24,050, or of any such drafts on the books of the Olympia Bank & Trust Company. The statement furnished by the receiver of the United States National Bank showed a balance of \$27,498.97 due from the United States National Bank to the Olympia Bank & Trust Company.

Summarizing, there are charges on their statement of \$12,500 August 31, and \$24,050 September 15, 1914, September 4, \$9,500, which do not appear upon the books of the Olympia Bank & Trust Company. The Ten Thousand Dollars and the item which appears in the statement of the receiver of the United States National Bank as charges which do not appear upon our books being the three items, makes a difference between my statement and the statement of the receiver of the United States National Bank of \$82,169 due the Olympia Bank & Trust Company from the United States National Bank.

(Testimony of Frank P. McKinney.)

On cross-examination by Mr. GOODALE, witness testified as follows: I have found the books of the Olympia Bank & Trust Company, so far as the entries are concerned are reliable. The cash-book is reliable. The entries are a true record. Referring to the two pages marked "1" I do not know whether they balance. I have never gone into them. There is a charge of \$55,000 against the United States National Bank. This has been changed from \$50,000 to \$55,000. This was done before I got the book. The item reads under date August 27, 1914, "United States National Bank of Centralia, Capital and undivided profits of \$55,000." (It is conceded by Mr. Troy of counsel, that the \$5000 of the [57] \$55,000 is a part of the \$7,000 that was conceded to be an overcharge.)

(Mr. McKinney proceeding:) This would not make the books balance. They would not balance with the charges on the other side. On the opposite side I find two items of date August 27th, one \$50,000 capital stock, and one undivided profits for \$5000. There seems to be no difference between the Olympia Bank & Trust Company and the Centralia bank that we had remitted the \$2000 and the \$6000. The items that are in controversy between the two receivers are the items in the sheet 1 which I read over first, which reads \$55,000 but which should be \$48,000; then the three items to the Tenino bank, or for the benefit of the Tenino bank aggregating \$10,000, and then the credit items which appear on the books of the United States National Bank in

(Testimony of Frank P. McKinney.)

the way of the Blumauer notes amounting to \$9500. Then the United States National Bank of Centralia should have its credit for \$1100, one for \$400 and one for \$330, which does not appear upon their books. The Tenino accounts are charged on the Olympia Bank and Trust Company Books against Centralia.

On redirect examination witness testified: The witness detaches the statement rendered to him by the receiver of the United States National Bank. Taking the statement prepared by witness himself witness testifies the items about which there is no controversy are checked in red; the items over which there is a dispute are marked with a circle opposite each. The three items on the bottom of the debit side are the Tenino items, and the three items on the credit side are the \$1830. The statement is offered in evidence and admitted as Plaintiff's Exhibit 4. Referring to the statement that was prepared by the receiver of the United States National Bank, witness testified:

The items that appear with the check-mark opposite each item are the items that coincide and check with the books of the Olympia [58] Bank and Trust Company. The items that are marked opposite with a cross are items that do not appear on the Olympia Bank & Trust Company's books, and over which there is a controversy. The statement is offered in evidence for purposes of illustration and also for the purpose of admission on the part of the defendant so far as they go and not binding the plaintiff as to the items as to which there is a con-

(Testimony of Frank P. McKinney.)

troversy. Statement admitted and marked Plaintiff's Exhibit 5.

The \$12,500 and the \$24,050 item in Exhibit 5, I have no record of, aggregating \$36,550. There is nothing in the books of the Olympia Bank & Trust Company to show any consideration for this \$36,550, and there is no consideration shown for the \$9500.

On the credit side this statement tallies with my statement except that the item which is shown as \$55,000, and which should be \$48,000, and also with the exception of the \$15,000 which is not mentioned for the reason that it is credited on one side and debited on the other, and has no bearing on the accounting. There is nothing on the books of the Olympia Bank & Trust Company showing consideration from the Tenino State Bank to the Olympia Bank & Trust Company, and they do not show anything due the Olympia Bank & Trust Company from the Tenino State Bank.

On cross-examination witness testifies: The books show that the Olympia Bank & Trust Company sent money to Tenino and that it was charged to Centralia. And do not show that the Olympia Bank & Trust Company ever got anything back from Tenino. The books do not show that anybody ever acknowledged liability for the money sent to Tenino. Nor do they show that they ever notified anybody else but Tenino. There has never been an account opened with the State Bank of Tenino.

(Testimony of Frank P. McKinney.)

On re-redirect witness testified: I made my statement from the original entry, from the cash-book. There are no false entries in the record and nothing [59] to indicate false entries. I would rather say there are errors which have been crossed out, as an error would be crossed out,—a line passed through it. There was no attempt to obliterate anything on the books. The errors show on their face.

Witness excused.

Testimony of Roy A. Langley, for Plaintiff.

ROY A. LANGLEY was called and sworn as a witness on behalf of plaintiff and in answer to interrogatories propounded to him by P. M. TROY testified as follows:

My name is Roy A. Langley. I am receiver of the State Bank of Tenino and have the records of the bank in my possession. Was appointed October 14, 1914. I am special state bank examiner of the State of Washington. I heard Mr. McKinney's testimony. I heard his testimony concerning the draft for \$6000 that was sent to the First National Bank in Seattle and heard the receipt read in connection with it. The books of the Tenino State Bank show a credit to Centralia on its cash-book of date September 14. The cash-book of the State Bank of Tenino credits the United States National Bank of Centralia with a wire of \$6000. On the same day they charged the First National Bank of Seattle with a wire of \$6000. Evidently it was a request to transfer the funds to Seattle for the State Bank of Te-

(Testimony of Roy A. Langley.)

nino by the United States National Bank of Centralia. There is no correspondence fallen into my hands at any time with reference to this transaction. All I have are the entries in the book that I have testified to. I think the remittance was in pursuance of the telephone message. The books of the Tenino bank show that it owed the Olympia Bank & Trust Company \$2000. On September 19, the books showed a credit of the Olympia Bank & Trust Company of \$2000.

(Mr. Troy of counsel for plaintiff makes a statement which all of counsel agree to that the State Bank of Tenino closed its doors on the 19th of September, 1914. The United States [60] National Bank on the 21st of September, 1914 and the Olympia Bank & Trust Company on September 22, 1914.)

In looking at the entries on the cash-book of the Olympia Bank & Trust Company dated December 13, 1914, where it reads: "United States National Bank of Centralia account Tenino, \$2000.00", I think that is the item mentioned in our book which I have just testified to. These are the only two items I find anything about in our books, relating to the Centralia, Tenino, Olympia transaction of ten thousand dollars. The only entries I have are the ones that I have testified to, relating to the two thousand dollars and the six thousand dollars. I wish to amend that last answer. On the 19th I find that the Olympia Bank & Trust Company was credited with \$2000, "Remittance to First National Bank."

(Testimony of Roy A. Langley.)

Redirect examination, witness further testified: That this was on September 19th. Witness consults cash-book of the Olympia Bank & Trust Company, and the following entry: "United States National Bank of Centralia, R to Seattle, \$2000." On the 15th. There is an additional \$2000 on the 19th. "Olympia Bank & Trust Company R \$2000.00." They are separate items. I think there were two remittances. They show on the face. The books show transactions relating to ten thousand dollars instead of eight. The transaction relating to three items, two \$2000 items and one \$6000 item.

On being interrogated by Mr. Vance for the intervenors witness testified: There is nothing on the book to show that the item of \$6000, or from the correspondence *nor* either of the \$2000 items was paid by the Tenino State Bank to the Olympia Bank & Trust Company. The amount was credited to the United States National Bank of Centralia and was evidently paid by them to Seattle. That is the deduction I would draw as a [61] banker.

On cross-examination by Mr. GOODALE, witness testified: On the 17th the State Bank of Tenino got credit for two thousand dollars that it had from the Olympia Bank & Trust Company, \$2000. It also appears that the Tenino State Bank credited the United States National Bank of Centralia by wire with \$6000, and the Tenino State Bank charged the First National Bank of Seattle with the \$6000 the

(Testimony of Roy A. Langley.)

same day. This would appear to be the same \$6000. I would assume from the face of the record that the United States National Bank deposited \$6000 in the First National Bank of Seattle, and the State Bank of Tenino took credit for \$6000.

Mr. Goodale offers memoranda check which reads as follows: "First National Bank, Seattle, \$6000, State Bank of Tenino," followed by initials, "charge Olympia Bank & Trust Company, Olympia."

(Witness proceeding:) I would infer that that was paid by the Dexter Horton National Bank to the First National Bank by request of the Olympia Bank & Trust Company to the credit of the State Bank of Tenino. Mr. Hays was cashier of the Tenino State Bank, I don't know whether he was practically the owner of the Tenino Bank or not.

Mr. Goodale offers in evidence Defendant's Exhibits "A" and "B," which are admitted in evidence and marked Defendant's Exhibits "A" and "B."

Mr. Vance offers in evidence certified copy of order permitting the stockholders to intervene, which is admitted and marked Intervenor's Exhibit 1. [62]

Testimony of W. Dean Hays, for Plaintiff.

W. DEAN HAYS, being a witness called on behalf of the plaintiff, after having been duly sworn, was examined by Mr. Vance, and testified as follows:

I live in Olympia, Washington. At one time was connected with the Olympia Bank & Trust Com-

(Testimony of W. Dean Hays.)

pany as cashier and assisted in its organization and was connected with it during its existence after organization. About a month. Had been a banker prior to its organization at Tenino and Centralia. I have been connected with the State Bank of Tenino seven or eight years, and prior to that was president of the State Bank in Chehalis. Was connected in business, association and commercial association with the United States National Bank. I severed my connections with the Tenino State Bank in June, 1914. Mr. Blumauer was the manager of the Tenino State Bank from the time I severed my connections with it until its failure. The United States National Bank and the Union Loan & Trust Company of Centralia were both owned by the same people. In July I sold my stock in the Tenino State Bank to Mr. Gilchrist and went away. He sent a man to take my place. I had no familiarity with the books of the Tenino State Bank since July, 1914, when I severed my connections with it. The only knowledge I have is by examination of the books since. Referring to the year 1914 either in June or July I took up the immediate part of organizing a bank in Olympia. I came to this country eight or nine years ago for the purpose of buying the Olympia National Bank and had a deal on with Mr. Smith, the cashier, for that purpose, which did not reach a conclusion and in June or July Mr. Mentzer and Mr. Copping agreed to buy my stock in the Tenino Bank and I went to Mr. Gilchrist, the vice-president of the United States National Bank

(Testimony of W. Dean Hays.)

and told him about it and he asked me if I would just as soon sell it to him and said he would buy it at the price I mentioned, if my representations [63] were correct. He and Mr. Daubney came to Tenino and made an examination of the record and he said he would take it, and he sent Mr. Daubney up to Tenino and I went to Olympia to organize the Olympia Bank & Trust Company, and did organize it. Mr. Gilchrist was the active manager and vice-president of the United States National Bank of Centralia. At the time of the sale of the stock in the State Bank of Tenino and afterwards I had several conversations with Mr. Gilchrist relating to the organization of the bank in Olympia. Gilchrist saw me several times and urged me to organize the bank in Olympia. That he would be glad to do the same as he had in Tenino,—take care of any paper I had, and suggested that I open up right away, and take the stock of the Olympia Bank and Trust Company and divide it up as the people had agreed to take it, and as it was taken and paid off, and give his bank credit for it and the balance of the stock which had not been paid for he would take and give the Olympia Bank & Trust Company credit for it and would send the stock up as it was sold and paid for. I took notes from the stockholders for \$11,500, and took stock in my own name for \$36,550, and assigned the notes, to wit, the \$11,500 to the United States National Bank, and gave my own notes for \$36,500, and the United States National Bank gave us credit for \$50,000 to open the bank with. The United

(Testimony of W. Dean Hays.)

States National Bank of Centralia issued a certificate of deposit for \$50,000, for these notes. This was all at the suggestion of C. S. Gilchrist. The notes of the stockholders was \$48,000. Two stockholders paid for their stock in cash, \$2000. \$47,000 worth of stock was deposited with the United States National Bank for collateral. The stock was issued in small denominations [64] of \$100, \$200, \$300 and \$500 certificates, with the expectation of people buying them, and their being paid for. These small denominations were issued upon suggestion of Mr. Gilchrist. Mr. Gilchrist suggested that my two notes, my notes for \$36,500 were deposited as security for the corresponding issue of stock upon Mr. Gilchrist's suggestion, so that if I wanted to open the bank right away I could do so, and as the stock was sold I could pay him up. As soon as the bank was opened he established correspondents in commercial companies; with the Hanover National Bank of New York, First National Bank of Portland, Dexter Horton National Bank of Seattle, Puget Sound National of Tacoma, United States National of Centralia. This was all done after the suggestion and consultation with C. S. Gilchrist and were made upon his suggestion. Deposits were made in each of the banks by remittances from the United States National Bank of Centralia, our principal correspondent. All of the conversations that we had relative to the organization of the Olympia Bank & Trust Company were carried on at my home in Olympia, except the first

(Testimony of W. Dean Hays.)

one, when we discussed the selling of the Tenino bank stock. The immediate transactions before opening the bank in Olympia were like this:

Mr. Gilchrist telephoned me in Olympia and wanted to know if I would be there that evening, and upon information that I would, he and his cashier, Mr. Daubney, came up in an automobile in the evening with \$2500 in cash and gave it to me and suggested that we issue stock in the denominations that they were issued in, and open right away, and when the stock was sold and paid for should give him credit for it, and he would send the stock back. The two notes aggregating \$36,500 were made by me at my home at that time. At my home in Olympia [65] in the evening. The notes were written on forms that I had in my house. That evening in my house. After the notes were made we received the certificate of deposit immediately authorizing us to do business. Mr. Gilchrist drew the certificate of deposit at my home in Olympia.

Certificate offered in evidence and marked Plaintiff's Exhibit 3. This certificate was accompanied by \$2500 cash. This was to open the bank. The \$2500 was gold coin. This certificate of deposit was given August 19, 1914, and the bank the next Saturday, the 21st. It was agreed that the principal place for carrying the deposit of the new bank would be in the United States National Bank of Centralia. Remittances were made every day. There were telephone calls several times during the day between us. We carried only \$3000 or \$4000 in our

(Testimony of W. Dean Hays.)

little bank, and the book of receipts and deposits was deposited with the United States National at Centralia. Deposits were made daily in the United States National. Mr. Gilchrist called me several times daily over the telephone while the organization of the bank was carried on. He wanted to know how I was succeeding in the organization of the bank. What I was doing. When we closed our doors we had something like \$44,000 deposited with them, nearly all of which was deposited with the United States National Bank. The bank was closed on September 23, 1914. Shortly prior to that, within a week or ten days Mr. Gilchrist came to my residence in an automobile about six o'clock in the morning and told me the bank examiner was at Centralia and would examine the United States National Bank *that* that he would object to the two notes aggregating \$36,500, and brought two drafts prepared by Mr. Gilchrist and on the stationery of the United States National Bank for me to sign, and I did so, with the agreement that in case the examiner objected to my two notes there and the stock that he would make a remittance of them, and afterwards [66] I would return the notes, and continue the agreement we already had. The drafts were never to be used except they were to be remitted to him in case the bank examiner objected. I have not seen the instruments since. On being shown one of the drafts witness identified it.

(Testimony of W. Dean Hays.)

(Witness continued:) This is in the handwriting of C. S. Gilchrist.

Whereupon it was offered in evidence by Mr. Vance in the following statement:

“It is the property of the United States National, but I would like to offer it in evidence for the purpose of this case.”

Introduced and marked Intervenor's Exhibit 4. The other draft was for \$24,050. I have not seen it since. It was also in the handwriting of C. S. Gilchrist. The drafts were not to be used at all unless the bank examiner objected to the notes in which event they were to be used temporarily and then the notes would be returned and the drafts returned. These drafts were made on the morning of the 15th of September, 1914, and were not entered on the books of the bank. They were not entered because I did not expect them to be used. I did not know that these drafts were treated as an asset by the United States National Bank until I went down to Centralia with Mr. Shaffer, Mr. Troy, Mr. Kenney after the closing of the doors of the United States National. I found this out from Mr. Hill, the receiver's bookkeeper. I found out that one of them had been charged against the Olympia Bank & Trust Company about two weeks before it was signed. It was not charged with our consent. These drafts were signed on the morning of the 15th and were not presented to us prior to the closing of our doors on the 23d. In ordinary banking business the drafts would have been charged against us on

(Testimony of W. Dean Hays.)

the same day and we would have received them in the course of a day or [67] so, and the proof would be marked up. The \$55,000 is explained this way. When the bank was opened the stock was to have a value of \$50,000, and it was so entered on the books. Thereafter, upon the consent of Mr. Gilchrist we decided to sell the stock for \$1.10 so as to have a surplus of \$5000, and we changed the entry to \$55,000. This extra \$5000 was to be paid for by the stockholders. I told him we had decided to increase the value of the stock ten per cent and charge him with the \$5000 extra, to which he consented. This was at Offut Lake. On September 5 we credited Centralia with \$1500. This was for the sale of stock to P. H. Carlyon and Dick Mitchell and Mrs. Mitchell. Thus there was an item of \$1100 and \$400 which was paid for stock.

Mr. Vance offers in evidence for the purpose of illustration the drafts drawn by the Olympia Bank & Trust Company on the United States National, introduced as intervenors' exhibits 5 and 6. With reference to the notes being items of the Blumauer Logging Company, the Blumauer Lumber Company, T. H. McClafferty, in the sum of \$9,500, the charge being made under date of September 4. During the time I was connected with the Olympia Bank & Trust Company we never had any such papers. We never received notice that the United States National Bank was charging *was* that \$9,500 worth of Blumauer paper and I never knew it until the time Mr. Kenney, Mr. Shaffer, Mr. Troy and

(Testimony of W. Dean Hays.)

myself went down to Centralia after the closing of the bank's doors. We received this information from the receiver of the United States National Bank. The item contained in the daily statement of the Tenino State Bank under date September 19, where the Olympia Bank & Trust Company is credited with \$2000 on the books of the Tenino State Bank, Mr. Gilchrist called me up and told me to send \$2000 to Tenino. Called me up over the telephone. Called me up on the morning of September 19. Told me to charge the United States National [68] Bank and send the money over there. This \$2,000 was coin I sent to Tenino at the request of Mr. Gilchrist over the telephone. The remittances that were made to the State Bank of Tenino or to its creditors were for the United States National Bank of Centralia, through Mr. C. S. Gilchrist, and at the request of no other. The custom was that all requests from the United States National Bank were made by telephone from Mr. Gilchrist to myself. Sometimes it was by telegram or letter, but nearly always by telephone. Ordinarily these telephone calls were not confirmed by writing. The \$6,000 draft was remitted by the Olympia Bank & Trust Company at the request of the United States National Bank of Centralia to Seattle, for the use and benefit of the State Bank of Tenino. Also the \$2,000 in the draft to the Dexter Horton National Bank was sent in the same way for Tenino at the request of the United States National Bank. The draft is

(Testimony of W. Dean Hays.)

submitted in evidence and marked Intervenors' Exhibit 7.

On cross-examination by Mr. GOODALE he testified as follows: My residence is in Offut, Washington. I have known Mr. Gilchrist for about eight years. My attention was directed to Olympia seven or eight years ago as a banking field. I talked with Mr. Gilchrist several years ago about it, and he was interested in it. I made a list of a large number of people, including a number of public officers having public funds in their custody and showed it to Mr. Gilchrist on a basis of confidence. The directors elected by the bank were C. E. Hewitt, C. S. Reinhart, H. T. Jones, I. M. Howell, C. Will Shaffer, and W. T. Cavanaugh. Mr. Reinhart was elected president, and Mr. C. Will Shaffer, secretary. I was elected cashier and Mr. Cavanaugh assistant cashier. The management of the bank was left to two or three of us. I talked with nobody concerning the notes which had been taken for the stock subscription. [69] I had the management of the bank. With reference to the \$36,500 of notes I gave personally to the United States National Bank, that amount of stock had been practically agreed to be taken and I gave the notes for the Olympia Bank & Trust Company in order to have the bank opened. I was not to be personally liable. This understanding was with Mr. Gilchrist of the United States National Bank. I had no understanding with the Olympia Bank & Trust Company with relation to that. The stockholders notes to the amount of

(Testimony of W. Dean Hays.)

\$48,000 were to be paid to the United States National Bank, and \$2000 in cash. The \$47,000 stock was collateral, for which the \$50,000 certificate was issued by the United States National. After the issuance of the two drafts, the \$36,500 worth of stock was returned but not the notes. I was to get \$7650 from Mr. Gilchrist for my stock in the Tenino bank, but I was never paid. [70]

On cross-examination by Mr. OWINGS, of the attorneys for plaintiff, Roy A. Langley, as receiver of the State Bank of Tenino, testified as follows: That Gilchrist had no financial interest in the State Bank of Tenino other than an option or right to purchase it, to be exercised at some future time. That the Blumauer Lumber Company was a large operating concern and checks were being issued continually for employment, supplies, and that sort of thing which would aggregate monthly ten thousand dollars; that not all of the checks would go through the State Bank of Tenino, but it was arranged locally that whenever checks were presented to the State Bank of Tenino they would be forwarded to the United States National Bank at Centralia and the latter bank agreed with the Blumauer Lumber Company on occasions to hold these checks when there was not sufficient funds in the bank in Seattle on which they were drawn until funds were deposited in the bank of Seattle. It was an arrangement between the United States National Bank and the Blumauer Lumber Company

(Testimony of W. Dean Hays.)

for the protection of the Blumauer Lumber Company. [71]

On cross-examination by Mr. OWINGS, of counsel for Roy A. Langley, witness testifies as follows: That he had an obligation with the United States National for some little time prior to its insolvency in the sum of Five Thousand Dollars, being a promissory note of the ordinary kind used by the bank nad on the bank's own printed form, and payable to the bank. It was returned by the United States National to the State Bank of Tenino when witness was in the bank and witness understood that it was returned afterwards and the account of the State Bank of Tenino was charged by the United States National Bank with the Five Thousand Dollars. The State Bank of Tenino refused payment on it and returned it to the United States National Bank of Centralia, with a statement of explanation that Mr. Gilchrist was going to buy witness' stock in the State Bank of Tenino and would take up that note and pay the difference, and no liability was shown or agreed to by the State Bank of Tenino as a party or endorser or anything of that sort on that note, and if it was charged back again that was after witness left the active management of the State Bank of Tenino. [72]

On cross-examination by Mr. GOODALE, witness testified as follows: Shows witness letter marked for identification Defendant's Exhibit "D," which is a letter written by witness to Mr. C. S. Gilchrist, dated July 24, 1914, offered in evidence, objected to

(Testimony of W. Dean Hays.)

as incompetent, irrelevant and immaterial unless it is connected up in some way with the identical Five Thousand Dollars which is the subject of dispute between the receiver of the State Bank of Tenino and the United States National. Statement by Mr. Goodale to the effect that he believes it will be connected up, although many of these transactions are yet dark to him. Objection overruled, exception taken.

(Witness read:) "Tenino, Washington, July 25, 1914. C. S. Gilchrist. My Dear Charlie: I have been using every available resource to reduce my note from two to one thousand dollars ever since receiving your letter of the 30 ult., but it seems impossible to do so at the present time. I have hopes of retiring it entirely soon, but it is impossible to do so just now. What I would like to do is this: give you my note for Five Thousand Dollars, collateral, five thousand stock in the bank, and you to place \$3000.00 as a special deposit in the State Bank of Tenino, against which we would not draw, and from the remaining \$2,000.00 to retire my present note. This stock is ample security as I have been offered two ten per share, and only last week I was offered a hundred and fifty. I am very anxious to do anything to secure you and if it is satisfactory, I will send you down a note with the collateral as outlined. I am expecting some funds soon, in fact, have been expecting it for some time, but am disappointed, but have the satisfaction of knowing that it will only be a question of time until

(Testimony of W. Dean Hays.)

it is forthcoming, when I will take up this obligation. Hoping this will be satisfactory, I remain very truly yours, W. DEAN HAYS." [73]

Witness believes that the transaction referred to in the letter was in fact carried out. Witness always got funds from Mr. Gilchrist upon request and believes that he got that. It was his own personal account and was changing greatly but he believes that he did have that balance increased.—his note increased from Two to Five Thousand Dollars and used Three Thousand Dollars himself, but the idea of the letter was that the State Bank of Tenino would not reduce its balance with the United States National of Centralia. It was credited to the State Bank of Tenino and was all credited to the State Bank of Tenino and under that arrangement Three Thousand out of Five Thousand Dollars was to remain until the note was paid or taken care of on the special deposit and the United States National Bank never had a right to charge up Three Thousand Dollars on the Tenino Bank's deposit towards the payment of that note. It was put in there as a special deposit with the agreement that it should not be withdrawn until that note had been paid.

On cross-examination by Mr. OWINGS, witness testified as follows: Witness never received the benefit of the entire Five Thousand Dollars owing to the United States National Bank, and the State Bank of Tenino. The State Bank of Tenino never received any benefit from that Five Thousand Dollar transaction.

(Testimony of W. Dean Hays.)

On cross-examination by Mr. GOODALE, witness further testified as follows: Two Thousand Dollars of the Five Thousand Dollars was applied to the payment of witness' personal and previously existing Two Thousand Dollar note which was in the United States National Bank, and the remaining Three Thousand Dollars was placed on the books of the United States National Bank and of the books of the State Bank of Tenino to the credit of the State Bank of Tenino in the United States National Bank, and to the debit of [74] the United States National on the books of the State Bank of Tenino. Of course the note was increased to Five Thousand Dollars, and the remaining Three Thousand Dollars which was credited by the United States National to the Bank of Tenino was drawn by witness not by the Tenino Bank, and was certainly used by witness. The United States National would simply credit the State Bank of Tenino with this remaining balance for witness' use and he would use it, and witness did use it. They credited the State Bank of Tenino for witness' use, and he drew the money out of the State Bank of Tenino, Three Thousand Dollars although that was a credit by witness' arrangement with the United States National Bank it was not to be drawn out and was to remain in the United States National Bank. [75]

Testimony of Isaac Blumauer, for Plaintiff.

ISAAC BLUMAUEER, called on behalf of the plaintiff and intervenors after having been first sworn and examined by Mr. O'Leary, testified as follows:

I was president of the Tenino State Bank from its

(Testimony of Isaac Blumauer.)

organization until it was closed up. The last few weeks of the bank being open I was there most of the time. Mh. Hays was the manager of the bank before I was and after that I was. I think Mr. Hays left the Tenino State Bank in August. Mr. Daubney who had been employed by the Union Loan and Trust Company of Centralia took Mr. Hays' place. Explaining the \$6000 item noted September 14, we charged the First National Bank of Seattle with \$6000 that was sent from the Olympia Bank & Trust Company. On page 58 of the cash-book the Tenino State Bank entry follows:

"First National Bank, Seattle wire \$6000." It meant that that amount was placed to our credit in the First National Bank of Seattle. It was sent there by the Olympia Bank & Trust Company. My personal knowledge of this transaction is this: We needed funds and the First National Bank of Seattle took care of drafts that we (State Bank of Tenino) had issued against us, they being our correspondent there, and as we had money due us, according to our books from the United States National Bank of Centralia, we asked the United States National Bank to see that we got the money then, and we got it through the United States National Bank, they telling us that they would have it there to our credit and have it sent by the Olympia Bank & Trust Company, although the Olympia Bank & Trust Company did not owe us the money. That was to be done through the United States National. But the Olympia bank would send it to Seattle for us. The Olympia Bank & Trust Company was not indebted to the State Bank of Tenino at any time. The request to the

(Testimony of Isaac Blumauer.)

United States National Bank to send the money to the First National Bank of Seattle [76] was done by telephone. I speaking with Charlie Gilchrist.

Referring to page 60 of the cash-book of the Tenino State Bank on the left-hand side, is an item noted on September 18, "Olympia Bank & Trust Company, Olympia account" in one claim \$386, in the next claim "\$2000." That happened in the same way as the \$6000, only instead of the Olympia Bank & Trust Company sending this draft again over to Seattle, for our credit, it was sent us in cash. I received it myself and our bank. I received the \$2000 that Mr. Hays placed on board the Olympia stage, that is the stage running between Olympia and Tenino. The figures 386 refer to the place it was posted in the ledger. On the same side of the same page of the cash-book under date September 19, 1914, an item reading "Olympia Bank & Trust Company, Olympia, R. 1st," and the figures followed by the figures \$2000, refer to a similar transaction. On account of my telephoning Mr. Gilchrist of Centralia there is a debit and credit item here, showing that the Olympia Bank & Trust Company sent this over to the First National Bank of Seattle to our credit. And here is where we charged, on the other side, the First National Bank of Seattle the *ame* amount. "R to 1st" abbreviates "Remittance to First National Bank," and is the usual abbreviation used. The money was not due us from the Olympia Bank. It was due from the Centralia Bank.

On Cross--examination witness testified: The Blumauer Lumber Company was a company of

(Testimony of Isaac Blumauer.)

my family, and was a large borrower from the Seattle National Bank. The Blumauer Lumber Company would issue checks against the Seattle National Bank. Sometimes it would make an overdraft of a number of thousand of dollars at a time and as these checks would be presented to the Tenino Bank the Tenino Bank would cash them, and then send them to the Centralia bank and get credit. When they reached the Centralia bank they would be presented to the Blumauer Lumber Company. This was done for the benefit of the [77] Blumauer Lumber Company. The daily statement of the State Bank of Tenino showed that on September 14, 1914, the United States National Bank owed the Tenino Bank \$7299; on the 15th, \$7000; on the 16th \$11,000; on the 17th \$13,000, and on the 18th \$9000. This would include the items that I have just testified to. The Blumauer checks. The daily statement shows that on the 12th the Centralia bank owed the Bank of Tenino, \$9000, and on the 10th \$8000. According to our books there never was a balance between the 10th of September and the 20th of September 1914 with less than \$7000 or \$8000 owing from the United States National Bank to the Tenino State Bank. We never asked the Olympia bank for anything, because we had nothing to do with it. Knowing we had this money due from the Centralia bank we made request to it and Mr. Gilchrist. Of course we would not care if it came from the Olympia bank or a bank in Oregon, but we asked for it from Mr. Gilchrist and he said he would see that we got it.

(Testimony of Isaac Blumauer.)

He would take it up with Mr. Hays and see that Mr. Hays made it good. When we asked Mr. Gilchrist to take care of our drafts he said he would take it up with Mr. Hays and have Mr. Hays take care of it.

[78]

ISAAC BLUMAUER, being called as a witness on behalf of plaintiff State Bank of Tenino, examined by Mr. OWINGS, testified as follows:

That he was president of the State Bank of Tenino. Referring to the note of one of the companies in which witness was interested, payable to the order of the Merchant's National Bank of Portland, on two or three occasions payments were to be made and the Blumauer Lumber Company were not able to meet them, and taking the matter up with the United States National Bank Mr. Gilchrist in particular, witness spoke to him about it and he told witness that he should issue drafts on the United States National Bank of Centralia and he would take care of them. The note of the Blumauer Company in the United States National Bank witness thinks was twenty-five hundred dollars and thinks the payments were made three five hundred dollar payments and one of one thousand dollars. The bank in Portland insisted upon having the money and agreed to take payments of five hundred dollars each, three five hundred dollar payments, and the balance, the fourth payment, a thousand dollars. These payments were to be made thirty, sixty days apart. It being without money witness took it up with Mr. Gilchrist of the United States

(Testimony of Isaac Blumauer.)

National Bank. He not wanting to extend us any further loans on account of not wishing to make excessive loans to the Blumauer Lumber Company wanted to handle it in that way so that the Tenino bank would issue the draft, and he would take care of it, and it would not appear as a note of the Blumauer Lumber Company. At this time the Blumauer Lumber Company was indebted to the United States National to such an extent that any more loans would have been considered excessive loans. The indebtedness may have been thirty or forty thousand dollars. Somewhere in that neighborhood. There was other paper. The Blumauer Logging Company [79] Mr. Gilchrist said he would take care of this loan. Witness' first talk was with Mr. Gilchrist in regard to it. And witness wanted to get a draft of five hundred dollars down to Portland in a hurry and did not wait till he could talk to Tenino, and thus he telephoned to Mr. Hays, and is under the impression that he told Mr. Hays to execute the draft to Portland so it would get away in the first mail, and telephoned him to do so and explained matters over the telephone. The other three drafts witness thinks were executed by him as president of the Tenino State Bank. Witness' understanding with Mr. Gilchrist was that as far as the bank in Tenino was concerned they would not be interested only that I should issue the draft on the Tenino bank and send it to Portland, and it was merely a matter between the Blumauer Lumber Company and the United States National

(Testimony of Isaac Blumauer.)

Bank in Centralia and witness believes that the drafts were just to be held in Centralia as a cash item against the Blumauer Lumber Company. The Tenino bank made no record of it at all, because after witness sent the drafts away that was all there was to it. No record was made of it. As near as witness could recall there was no record in the Tenino bank that those drafts were sent. Witness' postoffice address is Tenino. Has lived at Tenino and Bucoda and that vicinity for thirty years or more, and has been actively engaged in the business all the time, general merchandise and lumber and banking business. First became acquainted with Mr. Gilchrist probably a matter of twenty-five years ago. Mr. Gilchrist is one of the original organizers of the United States National Bank. Had a State Bank and then turned it into a national bank. Mr. Gilchrist has probably been in the banking business in Centralia for twenty years and previous to that he was right in the little town of Bucoda. Witness had a store there and Mr. Gilchrist was in the banking business there. [80] Witness was a depositor ever since Gilchrist organized until probably a year or so of the trouble commencing. Was a depositor in the Centralia bank and in the Bucoda bank. Was a borrower from the Centralia bank but not from the Bucoda bank. Gilchrist was very familiar with witness' financial condition. The five thousand dollar note of Mr. Hays which is held by the United States National Bank was brought to witness' attention when he

(Testimony of Isaac Blumauer.)

was in the State Bank of Tenino acting in the capacity of president. The note came down from the United States National. It was enclosed with a statement showing that it was charged up to our bank at Tenino and Mr. Hays was away at that time. He was in Olympia. Witness laid it on his desk wanting to ask Mr. Hays something about it because witness knew nothing about it. Witness did not want to give Centralia credit for it until he saw Mr. Hays and knew what the transaction was, and thinks then a few days after that when Mr. Hays did come to Tenino he took it up with him. Mr. Hays says it should not have been sent to our bank at Tenino. It should have been kept down there and that he would attend to the matter. Witness believes Mr. Hays returned it and it was sent up a second time because he knew when the bank closed that the five thousand dollar note was on his desk and we didn't give Centralia credit for it because witness understood it was a private transaction between Mr. Hays and Mr. Gilchrist, or between Mr. Hays and the United States National Bank.

On cross-examination by Mr. GOODALE, witness testified as follows: Did not mean that Mr. Gilchrist regarded the transaction of the Portland draft dictated and determined how this should be taken up meant he was acting for the United States National Bank. Gilchrist was under no obligations to take care of witness' debts. The debt was a debt of witness owing to the [81] Portland bank and

(Testimony of Isaac Blumauer.)

witness was primarily the person to determine how he was going to raise the funds to pay that. Neither Mr. Gilchrist nor the United States National Bank were under obligations to extend witness credit. They wanted to extend witness credit but did not want to advance it in such a way as to make it appear excessive loans. Witness did not borrow a large amount from the Tenino bank was borrowing larger amounts from the bank in Centralia which amounted to probably as much as sixty or seventy thousand dollars. The utmost borrowed from the Tenino bank at one time might have been as much as ten thousand dollars. Borrowed probably twenty-five hundred or thirty-five hundred, probably in the name of the Blumauer Lumber Company. Could not segregate the amounts as borrowed in the name of McClafferty. Borrowed under that name from the Tenino bank, two thousand dollars witness believes. Did not borrow under the name of the Hays Logging Company. That was an entirely different transaction.

Witness shown Defendant's Exhibit "F" and testifies that it was signed by Hays Logging Company, signed by himself. The Hays Logging Company was a different institution altogether. Mr. Hays and witness were helping somebody else out. Witness did not borrow it. It was business done for the Tenino bank. At that time the United States National Bank had a right to regard the Blumauer Lumber Company as having with the consent of the board of trustees of the Tenino bank a

(Testimony of Isaac Blumauer.)

large line of credit there. Witness could not state the day he had the conversation with Mr. Gilchrist in regard to the drafts. When the five hundred dollar draft came due it was expected in Portland from us and the Blumauer Lumber Company and each time that those payments became due or probably a day or two previous witness would see Mr. Gilchrist and probably would speak to him between times, because witness always spoke to him about [82] their affairs, letting him know in advance what he would have to take care of. Definitely and positively as to each one of these drafts witness had such conversation with Mr. Gilchrist as he has described. Separate as to each one. The bank in Portland notified us these \$500, payments would have to be paid and witness does not remember whether they were to be paid thirty, sixty or ninety days apart. Witness believes that the whole thing covered more than three months. Witness does not think that before the second payment was made other drafts had already come back and been charged to the Tenino bank by the United States National but does not think it was charged to the Tenino bank, but will not swear that it was not charged. And did not think that any of them came back. Never saw them again. Could not swear that they were not included in the statement and did not come back, because when the statement came in he was not at the bank all the time and after they left Tenino witness did not recall ever having seen them again or brought to my attention,

(Testimony of Isaac Blumauer.)

because if he had known they would come back to the Tenino bank and be a charge against the Tenino bank he would know that the Centralia bank wasn't carrying the Blumauer Lumber Company for them. Does not know anything to the contrary but what they still have them against the Blumauer Lumber Company. Made no arrangements with the Tenino bank to take care of them. Did not make any statement a few days ago regarding these drafts. Was not questioned on any drafts in regard to Portland. Was not asked in regard to some drafts that were charged by the United States National bank against the Tenino bank in connection with one of his companies and did not say there wasn't any drafts. Had been no such transaction to his knowledge. Does not remember testifying to that, thinks that, if he had testified that he would remember it. Knew nothing at all about the five thousand dollar [83] note set forth in the letter of July 24th, 1913, from Mr. Hays to Gilchrist as vice-president of the United States National, Defendant's Exhibit "D," which was exhibited, until he heard this letter read in court here. Does not think the Tenino bank had any paper of the Blumauer Company's at the time it closed its doors. [84]

Testimony of W. Dean Hays, for Plaintiff
(Recalled)

W. DEAN HAYS, on redirect examination, interrogated by Mr. VANCE testified as follows: At the time of the giving of the notes the corporation,

(Testimony of W. Dean Hays.)

Olympia Bank & Trust Company was not yet organized. The notes were given previously to the organization of the bank. The organization of the bank was left to me. I just did it. I had not informed the gentlemen who were subsequently elected as trustees and who were organizing the bank with me that the money to perfect the organization would be obtained by my giving a note to the United States National. I advised them that we were going to get the money from the United States National. That we were going to get a certificate of deposit from the United States Bank. I did not advise the board of trustees that I was going to borrow \$36,500 from the United States National Bank of Centralia before the organization was perfected. One of the drafts was found but not among the records of the Olympia Bank & Trust Company. The draft for \$24,050 I have never seen since I executed it that morning. The drafts were issued without the knowledge or consent of the other members of the board of trustees.

On recross-examination by Mr. GOODALE witness testified: There was no consultation with the other members of the board of trustees.

Testimony of C. Will Shaffer, for Plaintiff.

C. WILL SHAFFER was called as a witness on behalf of the plaintiff and intervenors and after being duly sworn testified as follows, on interrogatories propounded by Mr. O'LEARY:

I am one of the intervenors in this action, and own ten shares of stock in the Olympia Bank &

(Testimony of C. Will Shaffer.)

Trust Company. Am State Law Librarian. I have no funds belonging to the State of Washington in my custody. [85] I first learned of the execution of the two notes aggregating \$36,550 by Hays which notes were delivered to the United States National Bank, on the evening of September 22, 1914. I think it was on the night we decided we would not open the bank the next morning, and it was very meager then. The first I knew of the issuance of the two drafts, one for \$12,500, and one for \$24,050 on the funds of the Olympia bank that were in the United States National Bank, was a few days after we failed to open our bank. The State Bank examiner intimated that he had known of that fact, and we did not know anything about it until some days after that. I was a member of the board of trustees and secretary of the board of the Olympia Bank & Trust Company. The notes that have been designated here as the Blumauer notes, I first saw after the receiver of the Olympia Bank & Trust Company had been appointed, and Mr. Kenney, Mr. Troy and Mr. Hays and myself went to Centralia to ascertain if we could reconcile the two statements. We met with Mr. Chapman, and we wished to know what this \$9500 transaction was against the Olympia Bank & Trust Company, and he told us it was these notes, and at first refused to show us the notes. He told us the notes were there and had never been sent to the Olympia bank, but had been charged to Olympia but a few days before that. Later on

(Testimony of C. Will Shaffer.)

he did show them. I have forgotten whether there were two or three notes, but we saw a couple of notes and saw the endorsement on one of them. If the charge was made on the 4th day of September, it was some days after the receiver had been appointed for the Olympia Bank & Trust Company. I think it was some time in October before I knew anything about it. I had trust funds when the Olympia Bank was organized but no public funds under my control. I did not deposit the trust funds in the Olympia Bank & Trust Company. I never deposited [86] a cent in it and never had an account there. I gave a note for the stock I bought, but that note was to go to Mr. Hays personally. My name does not appear on the books, I am sure, unless it is on the official record of the board of directors. Not on the accounts of the company. I paid no cash for my stock. I gave a note, to Mr. Hays. I went into the bank at the suggestion of Mr. Parr who told me that the people who would finance it would loan me the money for the stock and I finally consented to act as a director. It was understood when the bank was opened that Mr. Reinhart and myself were to give personal attention to the affairs of the bank. Right away after the bank was organized I was required to be out of town. When I returned the greater part of my time was taken up in making arrangements for a building and the interior of it. The building was being constructed and it was understood that we were to take quarters in the building. On the

(Testimony of C. Will Shaffer.)

Saturday before the bank closed up Reinhart closed his office early and he asked me if I would go down and go through the books and see how the bank was getting along. I could not get away that Saturday and told him I would soon have my work so I could get away but the next day it was too late.

On redirect examination by Mr. O'LEARY, witness testified: I did not know that the United States National Bank of Centralia was the chief depository of the Olympia Bank & Trust Company until after the failure of the bank. I did not know that there was any agreement that there was to be this arrangement between the two banks. In fact the cashier had been instructed that no correspondents be selected without a conference with the directors, and there had been no conference. Of course the money would have to be deposited somewhere temporarily because we had no vault yet in our bank. We were to have meetings of the trustees at least once a month, but we met oftener than once [87] a month, I don't know how many meetings we had. We had several. Possibly a half a dozen, probably fewer, probably more. There were several meetings of the board of trustees. The directors were elected on the 14th of August, in the evening, 1914; the bank opened on the 19th of August. C. E. Hewitt, C. S. Reinhart, W. Dean Hays, I. M. Howell, C. Will Shaffer and W. T. Cavanaugh were elected directors. The following stockholders were present, representing the following stock:

(Testimony of C. Will Shaffer.)

C. E. Hewitt.....	10 shares
Thomas M. Vance.....	5 shares
I. M. Howell.....	50 shares
C. Will Shaffer.....	10 shares
C. S. Reinhart.....	15 shares
W. T. Cavanaugh.....	10 shares
Harry L. Parr.....	5 shares
W. Dean Hays.....	395 shares

C. S. Reinhart was elected president, I. M. Howell, vice-president, C. Will Shaffer, secretary of board of directors, W. Dean Hays, cashier, W. T. Cavanaugh, assistant cashier. The president and cashier were instructed to file all necessary papers, employ attorneys, clerical help, secure quarters and do any and all things for the establishment and operation of the corporation until the further order of the board of directors. I think the president took more or less an active part in the bank from that date. He had been a banker. I do not know whether there was a meeting the evening before the bank opened or not. I think there was. It was understood that the meeting on August 14, that the portion of the stock represented by Hays was to be distributed among the prospective stockholders throughout Thurston County. We subscribed for the stock right then and there. Those who were not there and took stock did not amount to a great many shares of stock. There were only three or four that we know of who were not there. They probably amounted to 35 or 40 shares. It was understood that Mr. Hays was to be personally

(Testimony of C. Will Shaffer.)

bound on his stock subscription. It was legitimate. I thought he had plenty of money. Mr. Parr had informed me that [88] *that* there was plenty of money to organize the bank. Parr is an attorney in Olympia. I did not know that anybody else had given their note for stock except myself, until after the bank had failed. I turned my note over to Mr. Hays about the 19th of August. He said he was to get certificates of deposit with it and asked me to sign the note. I made the note out to him personally. Witness identifies copy of the note, which is offered in evidence and marked Defendant's Exhibit "C." I assumed that we had the funds with which the stock was to be bought. I had borrowed enough to pay for my stock. I assumed that everybody else had paid for their stock. I thought I was just borrowing money from a friend to pay for my stock and that everybody else paying money for stock, we would have the money to start the bank.

On redirect examination by Mr. O'LEARY: The Articles of Incorporation were filed on the 19th of August.

**Testimony of W. Dean Hays, for Plaintiff (Recalled
—Cross-examination).**

W. DEAN HAYS, called for further cross-examination testified as follows: I never had a personal note in the bank at Tenino. I had \$5,000 borrowed from the United States National Bank of Centralia, but never borrowed \$5,000 from the Tenino bank.
[89]

(Testimony of W. Dean Hays.)

W. DEAN HAYS, called on behalf of the plaintiff State Bank of Tenino, on examination by Mr. OWINGS, testified as follows:

Witness being handed a paper marked for identification Tenino State Bank's Exhibit 4, testified that it was a carbon copy of a letter written by himself as vice-president of the State Bank of Tenino to Mr. C. S. Gilchrist as vice-president of the United States National Bank of Centralia. The original was actually sent by witness through the mails to the Centralia bank and by registered mail.

Letter offered in evidence, admitted and marked Tenino Bank's Exhibit 4. [90]

W. DEAN HAYS having been heretofore sworn, was recalled on behalf of the plaintiff, State Bank of Tenino, and in answer to interrogatories propounded by Mr. OWINGS, testified as follows:

Witness remembers that while he was cashier of the State Bank of Tenino a transaction where a draft was drawn by the State Bank of Tenino on the United States National in favor of the Merchant's National Bank in Portland for the purpose of paying a portion of the principal of the notes of Mr. Blaumauer of the Blaumauer Lumber Company, or some of the concerns that Mr. Blaumauer was interested in as follows: Mr. Blaumauer owed a note in Portland, had a letter from them stating that they wanted payment of five thousand dollars on it by a certain date, about three days following. I objected to loaning it out of the State Bank of Tenino funds and he went down to see Mr. Gilchrist in Centralia,

(Testimony of W. Dean Hays.)

and after going there he called me up by telephone and told me he had made arrangements with Charliet Gilchrist for the money. He informed me that Mr. Gilchrist had requested that I send the United States National a draft stating for me to send a draft to Portland for five thousand dollars and he would take care of it, which I did. There was an arrangement whereby the United States National was to really stand behind this draft. Never saw the draft after it was drawn and the same was not entered up and made a charge in the books of the State Bank of Tenino. Witness thought it was sort of queer that that draft was sent up to us as a charge and returned it with a letter stating that it was his understanding that that was not to be charged to us, and it was taken back by the Centralia bank. Has never seen the draft since and does not know where it is.

On cross-examination by Mr. GOODALE, witness testified: Witness knew of only one draft for five hundred dollars of this kind and if any others were drawn it was done by Mr. Blumauer or someone else.
[91]

Redirect by Mr. VANCE: There was no understanding at the meeting on August 14th, with the directors that as fast as the stock was sold it should be credited to the United States National Bank. The understanding was between me and the Centralia bank. This understanding was not explained to the directors or prospective directors at that time.
[92]

Testimony of C. S. Reinhart, for Intervenor.

C. S. REINHART, being sworn as a witness on behalf of the intervenors, after having been duly sworn and being interrogated by Mr. O'LEARY, testified as follows:

I am one of the owners of the capital stock of the Olympia Bank & Trust Company. Own fifteen shares. I was president of the bank and a member of the board of directors. I first learned of the two notes executed by W. Dean Hays, one for \$12,500 and one for \$24,050, after the bank closed its doors, right away after. I first learned that the stock that was held as collateral by the United States National Bank, after the failure of the Olympia Bank & Trust Company. Subsequent to the failure of the Olympia Bank & Trust Company.

On cross-examination witness testified as follows: From the very starting of the bank the books were not kept up, and the bookkeeping was not done in the manner I should think it should be. I complained considerable about it to Mr. Hays. I paid \$1650 for my fifteen shares. \$1.10. I borrowed the money from Mr. Hays and gave him my note. The Olympia Bank & Trust Company did not have anything to do with it. Never entered it on their books. Mr. Hays had no authority to represent the Olympia Bank & Trust Company before its organization. He had no authority to get money from any source for the purpose of credit of the Olympia Bank & Trust Company.

(Testimony of C. S. Reinhart.)

Redirect examination by Mr. O'LEARY: I did not know my personal note to Mr. Hays for \$1650 was down to the United States National Bank of Centralia until after the bank closed.

Testimony of W. T. Cavanaugh, for Intervenors.

W. T. CAVANAUGH, being called as a witness on behalf of the intervenors, after having been duly sworn testified:

I own stock in the Olympia Bank & Trust Company. Ten shares I paid for them by check on the Capital National Bank, which [93] was paid. I was assistant cashier of the bank. I knew nothing about bookkeeping in the bank, and the entries I made were made by me under direction of Mr. Hays. I first learned of the two notes in the sum of \$12,500 and \$24,050, which was in the United States National Bank of Centralia and for which certain stock of the Olympia Bank & Trust Company was deposited there as collateral until after the closing of the bank at Centralia, and after the time the Olympia Bank & Trust Company was closed. I first learned about the existence and execution of the two drafts in the sum of \$12,500 and \$24,050 from the state bank examiner after the Olympia bank had closed. I did not know that the United States National Bank was financing the opening of the Olympia Bank & Trust Company until after the bank was closed.

On cross-examination by Mr. GOODALE, witness testified: I was paid \$125 for my services after the bank closed. There was never any discussion at any

(Testimony of W. T. Cavanaugh.)

meeting of the board of directors of the details of any arrangement between the United States National Bank and the Olympia Bank & Trust Company. The remittance back to the Olympia Bank & Trust Company was introduced and marked Intervenors' Exhibit 8.

Testimony of C. S. Gilchrist, for Plaintiff.

C. S. GILCHRIST was called and sworn as a witness on behalf of plaintiff, testified as follows:

I was vice-president and manager of the United States National Bank before it closed its doors. The two notes which Mr. Hays executed, one for \$12,500 and one for \$24,050, and which were deposited in the United States National Bank, were signed W. Dean Hays, there were no other words attached to the signature other than just W. Dean Hays.

Testimony of Charles E. Hewitt, for Plaintiff.

CHARLES E. HEWITT, being sworn on behalf of the plaintiff and intervenors, in answer to interrogatories propounded by [94] Mr. O'LEARY, testified as follows:

I live in Tumwater, am a druggist. Was a director in the Olympia Bank & Trust Company, and am an owner of stock, ten shares. I paid for my stock by note. I transacted the business with W. Dean Hays. I did not know my note was with the United States National Bank of Centralia until the bank examiner told me the night we decided we had to suspend business, and that was a few nights after the United States National suspended. I first learned of the existence of the two notes one for \$12,500 and

(Testimony of C. S. Reinhart.)

Redirect examination by Mr. O'LEARY: I did not know my personal note to Mr. Hays for \$1650 was down to the United States National Bank of Centralia until after the bank closed.

Testimony of W. T. Cavanaugh, for Intervenors.

W. T. CAVANAUGH, being called as a witness on behalf of the intervenors, after having been duly sworn testified:

I own stock in the Olympia Bank & Trust Company. Ten shares I paid for them by check on the Capital National Bank, which [93] was paid. I was assistant cashier of the bank. I knew nothing about bookkeeping in the bank, and the entries I made were made by me under direction of Mr. Hays. I first learned of the two notes in the sum of \$12,500 and \$24,050, which was in the United States National Bank of Centralia and for which certain stock of the Olympia Bank & Trust Company was deposited there as collateral until after the closing of the bank at Centralia, and after the time the Olympia Bank & Trust Company was closed. I first learned about the existence and execution of the two drafts in the sum of \$12,500 and \$24,050 from the state bank examiner after the Olympia bank had closed. I did not know that the United States National Bank was financing the opening of the Olympia Bank & Trust Company until after the bank was closed.

On cross-examination by Mr. GOODALE, witness testified: I was paid \$125 for my services after the bank closed. There was never any discussion at any

(Testimony of W. T. Cavanaugh.)

meeting of the board of directors of the details of any arrangement between the United States National Bank and the Olympia Bank & Trust Company. The remittance back to the Olympia Bank & Trust Company was introduced and marked Intervenors' Exhibit 8.

Testimony of C. S. Gilchrist, for Plaintiff.

C. S. GILCHRIST was called and sworn as a witness on behalf of plaintiff, testified as follows:

I was vice-president and manager of the United States National Bank before it closed its doors. The two notes which Mr. Hays executed, one for \$12,500 and one for \$24,050, and which were deposited in the United States National Bank, were signed W. Dean Hays, there were no other words attached to the signature other than just W. Dean Hays.

Testimony of Charles E. Hewitt, for Plaintiff.

CHARLES E. HEWITT, being sworn on behalf of the plaintiff and intervenors, in answer to interrogatories propounded by [94] Mr. O'LEARY, testified as follows:

I live in Tumwater, am a druggist. Was a director in the Olympia Bank & Trust Company, and am an owner of stock, ten shares. I paid for my stock by note. I transacted the business with W. Dean Hays. I did not know my note was with the United States National Bank of Centralia until the bank examiner told me the night we decided we had to suspend business, and that was a few nights after the United States National suspended. I first learned of the existence of the two notes one for \$12,500 and

(Testimony of Charles E. Hewitt.)

one for \$24,050 respectively, which were in the United States National Bank, and to secure which there was on deposit in the United States National Bank certificates of stock about the time the Olympia Bank & Trust Company suspended, that night, I think it was. I did not find out that the two drafts had been executed by anyone in the same amount as those two Hays notes until after Hays was arrested. This was after the bank closed.

On cross-examination by Mr. GOODALE, witness testified: I do not remember signing any stock subscriptions. I did not know that the Olympia bank had gotten credit from the United States National until after the bank failed. W. Dean Hays lead me to believe that he had money himself, and plenty of it. I told him when I first talked of taking stock that I did not have the money to take care of it and he said he had plenty of money and could take care of this at any time. I thought my fellow stockholders had paid for their stock in cash, and that I was the only one who did not have the money. I made no inquiries as to whether they had paid or not. I thought they had. It was understood that we had adequate funds. Mr. Hays told me so.

Defendant's Exhibit "F" introduced in evidence, over the objection and exception of plaintiff. [95]

W. Dean Hays induced me to become interested in the bank.

A certified copy of the order of the Court of Thurston County directing the receiver to commence an action, was admitted and was admitted as Plain-

(Testimony of Frank A. Hill.)

tiff's Exhibit "A," over the objection and exception of the defendant.

Testimony of Frank A. Hill, for Plaintiff.

FRANK A. HILL, being sworn on behalf of the plaintiff interrogated by Mr. Vance, testified as follows:

I am clerk of the receivership of the United States National Bank and have examined the books and am familiar with the books. Within three months after the closing of the doors of the United States National Bank, the following individuals or corporations were indebted to the bank and went into the hands of receivers; Clear Water Lumber Company, Blumauer interests, Wabash Lumber Company, Chehalis Lumber and Shingle Company, Dysart and Ellsbury, C. S. Gilchrist, the Chehalis River Lumber Company was a substantial debtor of the bank, in the neighborhood of one hundred thousand dollars; the Johnson Creek Lumber Company went into the hands of a receiver seven or eight months afterwards. The indebtedness of the Blumauer interests was in the neighborhood of \$48,000. The Tenino Manufacturing Company owed the bank about ten thousand dollars; among the papers that I found when the bank went into the hands of a receiver was a draft of \$12,500 from the Olympia Bank & Trust Company to the United States National Bank.

Witness is shown Plaintiff's Exhibit 4 and identifies it as a draft that he found among the records of the United States National Bank. There is no charge against the Olympia Bank & Trust Company

(Testimony of Frank A. Hill.)

of \$12,500 on September 15, 1914. There is one on August 31, 1914. There is a charge on the 15th of September, 1914 of \$24,050.

Testimony of I. M. Howell, for Plaintiff.

I. M. HOWELL, being called as a witness on behalf of plaintiffs and intervenors, testified as follows: [96]

I am a stockholder in the Olympia Bank & Trust Company to the extent of five thousand dollars, representing fifty shares. I had an agreement with Mr. Hays by which he was to pay for the stock and I was to give him an agreement in return for payment of the stock. I met Mr. Hays one morning as I was going down to my office. On the way down he told me he was about to organize a bank and trust company there and wanted to know if I would be interested. I told him I would not in that I had not money to invest in bank stock. We got down to the office and he mentioned who was going in with him, Mr. Reinhart and Mr. Shaffer and mentioned other gentlemen, and said he would like to talk with me about it and I said all right. He came up to my office once or twice during the day and I was very busy and could not see him. Made an appointment with me to go to his house. I went to his house and asked him what he wanted. I said I had no money. He said he had plenty of money and could let me have money to pay for the stock. I told him I would not give a note, but I had some interests whereby I could enter into an agreement with him to secure him with the stock, with the understanding that I

(Testimony of I. M. Howell.)

was to have an office in the bank at the completion of my term as Secretary of State and with that agreement I took the stock. I did give a note under these circumstances. Mr. Hays came into the office one morning and said he was ready to organize the bank then and would like to have me sign a note. I explained to him that I was not to give a note but was to give an agreement. He said he realized that and he only wanted the note for a couple of days and then would hand it back to me. I asked if the note was to be deposited with anybody any place and discounted and he said not. After some conversation with him I signed the note. I first learned that my note was down in the United States National Bank at Centralia the night before the Olympia [97] Bank & Trust Company closed. I first learned of the existence of the two notes signed by W. Dean Hays in the sum of \$12,500 and \$24,050 respectively, which were in the United States National Bank and to secure which there was deposited a number of shares of the Olympia Bank & Trust Company at the meeting in the bank cashier's office, the night after the Olympia Bank & Trust Company closed. At the same time I first learned of two drafts in the same amount as the two Hays notes. I am Secretary of the State of Washington, and was such secretary during the time the Olympia Bank & Trust Company was organized. I deposited some public funds that came into my hands as Secretary of State. I had \$4,864.34.

(Testimony of I. M. Howell.)

On cross-examination, interrogated by Mr. GOODALE, witness testified as follows: There was never anything mentioned between Mr. Hays and me about securing public deposits.

Testimony of Frank A. Hill, for Plaintiff (Recalled).

FRANK A. HILL, being recalled and interrogated by Mr. VANCE, testified as follows:

The United States National Bank had the following claims against firms that went into bankruptcy within two or three months after the closing of the doors of the United States National: Blumauer Logging Company, \$10,000, adjudicated bankrupt October 3, 1914; Blumauer Lumber Company, \$42,437.83, adjudicated bankrupt November 15, 1914; Blumauer Logging Company \$100000000, adjudicated November 5, 1914; Chehalis River Lumber & Shingle Company, \$36,364.20 and \$36,500, adjudicated September 24; Clear Water Lumber Company, \$45,456.41, adjudicated November 5, 1914; Creates Brothers, \$16,255.75, adjudicated November 16, 1914; George Dysart, \$26,909.98, adjudicated November 28, 1914; George Ellsbury, \$14,738.90 and \$800.00, adjudicated [98] November 28, 1914; Dysart & Ellsbury, \$14,738.90, adjudicated November 28, 1914, and C. S. Gilchrist, \$48,448.66 and \$15,-249.55, adjudicated November 30, 1914.

On recross-examination witness was permitted to testify, concerning the present value of the claims over the objection of Mr. Vance, for plaintiffs and intervenors, who objected for the reason that the in-

(Testimony of Frank A. Hill.)

quiry was as to the value at the time the bank went into insolvency and prior thereto and not at the present time, to which exception was taken. [99]

**Testimony of Roy A. Langley, for Plaintiff
(Recalled).**

ROY A. LANGLEY was called on behalf of himself as receiver of the State Bank of Tenino, and testified as follows, on direct examination by Mr. OWINGS:

That he is receiver of the State Bank of Tenino and was appointed October, 1914. Qualified about October 14th and proceeded to take charge of the affairs of the State Bank, and has continued as such receiver ever since. Has examined the books of account and papers of the State Bank of Tenino and found mutual accounts and demands, etc., of the State Bank of Tenino and the United States National. Has likewise made an examination of the books and papers and accounts of the United States National with reference to the transactions had between the two banks in company with Mr. Hill. Attempted to affect a reconciliation of the accounts of the two institutions. Mailed Mr. Hill a copy of our books previous to that time, and received a copy of his books at a later date. Both marked Plaintiff's Identification 1.

Identification No. 1 is a statement witness received from the United States National Bank and received the same since the failure about six months ago, the same being offered in evidence was admitted and marked Plaintiff's Exhibit No. 1.

(Testimony of Roy A. Langley.)

Witness heard the testimony of Mr. Hays with reference to the note of five thousand dollars made by Mr. Hays, payable to the order of the United States National Bank. When he took charge he found a note of W. Dean Hays, payable to the United States National among the papers of the State Bank of Tenino. Paper marked Plaintiff's Identification No. 2 was submitted to witness, who testified that it was a note of W. Dean Hays payable to the United States National Bank for five thousand dollars. Offered and admitted in evidence and marked Plaintiff's Exhibit 2. Witness has been cashier of banks in the State of Washington since 1906. Had been engaged in the banking business prior to that time as a bookkeeper. Is now a special deputy [100] State Bank examiner of the State of Washington. Found nothing whatever in the books of the State Bank of Tenino, with reference to this five thousand dollar note. From witness' examination of the books of account of the State Bank of Tenino he did *not* find *no* entries relating to the payment of the note executed by Mr. Blumauer or one of the companies in which Mr. Blumauer is interested to the Merchant's National Bank of Portland. The books of the State Bank of Tenino show that the State Bank of Tenino credited the United States National Bank six thousand and charged the First National Bank of Seattle with a like amount. Six thousand dollars was credited to the United States National Bank of Centralia on September 14. That is the notation "Wire." The

(Testimony of Roy A. Langley.)

First National Bank of Seattle was charged on the same day with six thousand dollars with a notation "Wire." This only refers to the United States National Bank. There is a credit to the Olympia Bank & Trust Company of two thousand dollars on September 19, and it is charged to the First National Bank of Seattle on the same day.

On cross-examination by Mr. GOODALE, witness further testified: Witness can't find any item in the books of the bank which would identify the five thousand dollar note. Did not know there was any such note until witness found it on one of the desks and found that there was a charge of five thousand a hundred and fifteen dollars and thirty-three cents on the United States National books. Our records show nothing regarding this in any way. And our records do not show anything which positively identifies this, and they do not show any five thousand dollar item which may or may not have been this item from witness' examination. Witness could not say that this five thousand dollar item did not go through the books of the Tenino bank. They might have went through a year before that, that for all [101] witness could know, but there is no record he has been able to find regarding that five thousand dollar note in any way. There is no record of this note in our books in any manner whatever. Witness don't know that the charge of one hundred thirteen dollars and fifty-one cents made by the United States National is for this note. Don't know that it is or is not, but presumes so, and would not approve this item in the

(Testimony of Roy A. Langley.)

reconciliation. Found in the files that he took over as receiver a few of the monthly statements of the United States National. And found a statement covering the period in which this charge was made and there was included an item of five thousand dollars. Naturally it would indicate that that item was disputed if they had not given them credit for it. It is usual for one bank receiving a statement from another bank of items which are charged and credited against the bank that receives the statement to immediately take up and dispute any item that is objected to. Found no evidence to show that there ever was any such note except this statement. From the mere fact that the Tenino bank never gave them any credit for it it certainly would be disputed. Did not find anything except the absence of credit of the Tenino bank to indicate that that item was ever disputed in that item being charged against them. Witness has not any evidence that the Tenino bank disputed the item. A note of this kind would be in the note register. That is where it would be entered if it was a note entered in the bank. Witness could not connect this note at all. All notes made at the bank are supposed to have been entered by their name, maker and amount etc., but witness did not find any note of W. Dean Hays for five thousand dollars of that date. It would have been very easy to have this note go through the books of the bank and to have it actually appear as an asset of the bank and yet not have the name of W. Dean Hays appear on the books [102] if that had been

(Testimony of Roy A. Langley.)

desired by Mr. Hays if he had somebody else put the note in the bank. Witness' understanding concerning a certain Portland draft was that there were drafts drawn on Centralia and sent to the Merchant's National Bank in Portland and were paid by Centralia.

On redirect examination by Mr. OWINGS, witness further testified: There is nothing on the books of the bank that connect the State Bank of Tenino in any shape or form, evidencing any transaction between the State Bank of Tenino of the Blumauers' drafts drawn on the United States National payable to the Merchant's National Bank of Portland.

On recross-examination by Mr. GOODALE, witness further testified:

Proof of Claim of the receiver of the State Bank of Tenino filed with the receiver of the United States National offered in evidence, admitted and marked Plaintiff's Exhibit 3. [103]

On cross-examination of Mr. Roy A. Langley by Mr. P. M. TROY, he testified as follows: The six-thousand dollar item that I have testified to as being credited to Centralia, for which Centralia had made no charge is the six thousand dollars represented by money that was remitted by the Olympia Bank & Trust Company to Seattle, I would judge from the record. Theh there are two two-thousand dollar items, the one in question and one a draft to Seattle, I testified to this the other day.

**Testimony of Frank P. McKinney, for Plaintiff
(Recalled).**

FRANK P. McKINNEY, recalled on behalf of the plaintiff and intervenors and interrogated by Mr. TROY testified as follows:

Whereupon it was admitted and agreed by counsel for the plaintiff and defendant that demand had been duly made by the plaintiff as receiver against the defendant as receiver before the commencement of this action.

Testimony of Mr. Hill, for Plaintiff (Recalled).

Mr. HILL, being recalled and interrogated by Mr. VANCE testified as follows:

When the United States National went into the hands of a receiver there was something like a million dollars of bills receivable, between one million and one million one hundred thousand dollars. There had been collected up to the time of trial between three hundred seventy-five and four hundred thousand dollars on these bills receivable.

Whereupon the plaintiffs and intervenors rest and the State Bank of Tenino rests. Whereupon Mr. Goodale, for the defendant moves that the first and second cause of action stated in the amended complaint of the plaintiff be dismissed, which motion was denied.

Testimony of George Dysart, for Defendant.

GEORGE DYSART, called as a witness on behalf of the defendant, after having been first duly sworn on being interrogated by Mr. GOODALE, testified as follows: [104]

(Testimony of George Dysart.)

I was trustee and second vice-president of the United States National Bank. I had no knowledge of the credit of \$48,000 or \$50,000 given to the Olympia Bank & Trust Company until the night of September 14, 1914. The directors of the United States National Bank were Vanness, myself, Charles Gilchrist, Mr. C. S. Gilchrist, and J. W. Daubney. The circumstances that lead to the closing of the doors of the United States National Bank were indiscretions that we found on the part of C. S. Gilchrist. When the war came on in August and September we took steps to strengthen the bank and increase the resources because we knew it was going to have more or less trouble and more or less withdrawals and we took steps to build up a bigger reserve and *put beyond* any question of trouble. We were arranging for Mr. Vanness to take up the indebtedness of the Clear Water Lumber Company by bonding. This would unload twenty thousand dollars, and then there was the Chester Snow Logging and Shingle Company who was a very heavy debtor. We were carrying their paper to a very heavy extent, either fifteen or thirty thousand dollars. Another deal was raising one hundred and twenty-five thousand dollars from the cities of Tacoma, Seattle and Olympia. We had been arranging for a hundred and twenty-five thousand dollars of that, which was sent down but was never used. We never authorized Mr. Gilchrist to give the \$50,000 credit to the Olympia Bank & Trust Company, nor did we

(Testimony of C. S. Gilchrist.)

authorize him to accept the notes of Mr. W. Dean Hays for \$36,500. Mr. C. S. Gilchrist was the active manager of the bank.

Testimony of C. S. Gilchrist, for Defendant.

C. S. GILCHRIST, called as a witness on behalf of the defendant, after having been duly sworn, interrogated by Mr. GOODALE, testified as follows:
[105]

I was director and vice-president of the United States National Bank. When the Olympia Bank & Trust Company was organized there was an agreement from Mr. Hays that we would be allowed to charge these notes back to the account. We did not receive any money for that credit of fifty thousand dollars. I received stock in the Olympia Bank & Trust Company the *the* sum of \$2000 transferred to the National Bank of Commerce of Seattle. Later on our bank, the United States National received various deposits of money, cash items from the Olympia bank. With reference to the \$6000 item, Mr. Blumauer called me up as he did quite frequently and called attention to the fact that their drafts were going to protest in Seattle, and it was absolutely necessary that finances be transferred there to cover. I told him I would take the matter up with Mr. W. Dean Hays. I called Mr. Hays on the phone and told him of the situation, and told him to remit money there to protect the drafts. He did so and charged it to the United States National Bank. The other two transactions—the two \$2000 transactions were practically the same. We had

(Testimony of C. S. Gilchrist.)

sent Mr. Daubney up to assist in the managing of the Tenino bank. The \$9500. covering the *Baluaue* notes, that is the notes of the Blumauer Lumber Company, and I think the Blumauer Mercantile Company aggregating \$9500, which are charged against the Olympia Bank & Trust Company. These notes were charged to the Olympia Bank & Trust Company's account and were not returned directly to Mr. Hays for the reason that I had suggested that it would be better for us to retain them. To hold the notes until they were properly renewed and placed in better form so they could be handled. There was no suggestion that that paper be charged to the Olympia Bank & Trust Company prior to that time. The Olympia Bank & Trust Company had no connection with us in any way regarding the fact that this paper was charged to them. I do not [106] know whether they were advised they had been debited with these notes or not.

Witness knows about the transaction between the Tenino bank and the Portland, in which a claim was made that the United States National Bank had a part, and heard the testimony that has been given here in connection with it. The facts in regard thereto are that the state Bank of Tenino arranged for a loan of credit with the Merchant's National Bank of Portland, covering some three or four thousand dollars. Witness can't say positively, by giving and putting up the notes of the Blumauer Lumber Company. When these particular notes came due the Merchant's National Bank was insistent that they

(Testimony of C. S. Gilchrist.)

be taken up. Mr. Hays and witness, thinks as well Blumauer as well discussed the situation with witness, and witness suggested that in all probability the Merchant's National Bank of Portland would be glad to carry any part of these notes provided the account was renewed, or rather that payment would be made, and no doubt they would be glad to carry along the balance. In line with that suggestion they sent their ordinary drafts for five hundred or a thousand dollars, in fact drafts aggregating twenty-five hundred dollars. Sent various drafts for twenty-five hundred dollars to apply. The drafts were sent by Mr. Hays and Mr. Blumauer. Drafts on the State Bank of Tenino drawn on the United States National at Centralia. These drafts differ in no way than any other drafts drawn by them, other than the fact that they consulted me, stating why they were given and witness stated that he would protect the draft when they came in in the ordinary course of business, notwithstanding their account at that time, and that is the only connection witness had with the transaction. Had not knowledge of the fact that if it should turn out to be a fact that if the drafts were not paid off by Blumauer, or whoever they were issued to benefit [107] to the State Bank of Tenino. Was aware of the fact that there had been permitted for a long time by the State Bank of Tenino a large loan of credit and by the Blumauer Lumber Company for whose benefit these particular drafts were issued and that there was a business relationship there with the

(Testimony of C. S. Gilchrist.)

State Bank of Tenino by which they seemed ready to extend a large amount of credit. There was nothing in this particular transaction which was out of the ordinary or indicated any different arrangement between the Tenino Bank and the Blaumauer Lumber Company from what the arrangements had been in the past.

Was familiar with the transaction in regard to a certain five thousand dollar note of W. Dean Hays which was sent to his bank by and through the Tenino State Bank. Recollects a special agreement for a special deposit in connection with the five thousand dollar note. Defendant's Exhibit "B" having been shown to witness he describes that transaction. This is a letter from W. Dean Hays of the State Bank of Tenino to myself as vice-president of the United States National Bank, wherein he calls attention to a note of two thousand dollars, which we had been carrying for a considerable time and on which we had been insisting on its being taken up. He takes up the question of getting an additional loan, in fact a loan of five thousand dollars, in which he agreed to put up certain stock as collateral. The loan was finally made to the best of my recollection, along in November, with the understanding that three thousand dollars of the amount should remain as an established deposit for the State Bank of Tenino. They were to maintain this deposit until the note was liquidated. The note was charged to their account, witness thinks, under date of July 24, 1914. Not just positive as to the date. The five thousand

(Testimony of C. S. Gilchrist.)

dollars is one of the items in dispute as between the Tenino bank and the receiver of the United States National Bank. The two thousand dollar note was treated in exactly the [108] same manner as this five thousand, other than there was no agreement relative to their carrying any special deposit. The two thousand dollar note of Mr. Hays was sent down to the credit of the State Bank of Tenino and placed to their account and a statement rendered and reconciled. We credited the note to our account and have our certificate back showing that the account had reconciled. Had no knowledge that after he had charged up the five thousand dollar note, canceled it and returned it to Mr. Hays that it had not been placed to his credit for a considerable time afterwards, in fact a long time afterwards. In fact, we had made out our statements monthly and insisted that the statement be made and he tendered the reconciliation on the form we have and stated he had examined the account and found it correct.

Witness being showed Defendant's Exhibit I-B. That is a statement for reconciliation of the accounts between the United States National Bank and the State Bank of Tenino, showing the two thousand dollar note of W. Dean Hays that witness has just testified to. Being shown Defendant's Exhibit I-A, he testifies that that is an acknowledgment executed by the State Bank of Tenino, W. Dean Hays, Vice-President to the United States National Bank as to the correctness of their statement, of the statement of their account at the close of business July 25, 1913,

(Testimony of C. S. Gilchrist.)

certifying the account rendered was examined and found correct, being the same note witness has referred to.

On cross-examination by Mr. OWINGS, witness testified: Witness being shown defendant's Exhibit I-B, testifies in explaining the same that the statement here calls attention to the note originally given by W. Dean Hays for \$2,000, and he afterwards applied for a five thousand dollar loan with the distinct understanding that he was to maintain a special account and balance of three thousand dollars. That evidences the fact [109] that the two thousand dollar note was paid. This is all there is in the statement that has anything to do with this transaction. The five thousand dollar note sent to us in the ordinary course of business with all the notes that we took from the State Bank of Tenino was credited to the State Bank of Tenino, and the five thousand dollars went to the credit of the State Bank of Tenino. The original note, when it was sent down, came up from the State Bank of Tenino as ordinary paper rediscounted. It was sent down in the same manner as other notes we had taken. It came directly from the State Bank of Tenino to us for credit. The note was not signed or executed in Centralia. The original note was made six months prior to that. The exhibit is the original of the note. Witness is not sure if the first note had the Tenino State Bank's endorsement. It was drawn on their paper when it came down. We often took paper from them with the endorsement of the bank. It was

(Testimony of C. S. Gilchrist.)

drawn on their form. The Centralia bank's form was used because it was not unusual for witness, when a note was long overdue and he had made a special effort to get a new note and get new paper into the bank to make out a note himself and forward it and ask that it be executed and returned promptly. Witness has not stated that the State Bank of Tenino was an endorser on the note. Witness thought it was the note of the State Bank of Tenino, the same as he did any other note he took from there, and he took a great many from them. There wasn't any signature of the State Bank of Tenino, nor was there on other notes that he got in the same manner. Witness supposed this was an obligation of the State Bank of Tenino, as well as an obligation of W. Dean Hays. The five thousand dollars was placed to the credit of the State Bank of Tenino and that was an open account that had existed for many years, and it fluctuated back and forth as the different transactions occurred. That is an active [110] current, open account. There wasn't any special deposit of this three thousand dollars in any way. It did not come in the form of a C. D. It didn't go into the open account or bank account of a different character in any respect than this open account, but it was clearly understood between Mr. Hays and witness for what purpose it was meant and was the special account meant when he said special account. Witness being shown State Bank of Tenino's Exhibit 5, testifies that the following excerpt:

(Testimony of C. S. Gilchrist.)

“We also charge your account and return herewith note of your Mr. W. Dean Hays for five thousand dollars and interest a hundred thirteen thirty-three, making a total charge of five thousand a hundred and thirteen dollars and thirty-three cents” refers to this transaction. That note was charged to their account returned to Mr. Hays and he failed to credit it to our account and we sent him our monthly statement, and repeatedly asked him to send us an acknowledgment of the statement showing that the same was correct according to their books and that was not forthcoming and finally he returned this note to us, asking as a special favor that we again credit the account and we done so temporarily covering a period of some two or three weeks, I should judge, when we again charged the note and sent it back to him. The note was forwarded by us in the ordinary course and sent back, and then we credited it back to Tenino then we again sent it to Tenino and charged it to their account. He sent the note back for the purpose of getting his books in proper shape so that they would agree with ours, anticipating a call from the bank examiner and I wrote and told him we would be pleased to credit that draft, so he could get his books straightened up and checked up, and as soon as that was done we immediately charged the note to his account and returned it to him. The general account that existed between [111] the State Bank of Tenino and the United States National Bank after the execution of this note was at times comparatively small and some-

(Testimony of C. S. Gilchrist.)

times overdrawn and after the execution of this note their books would show an overdraft of Tenino's account. There was deposited as collateral for this note some collateral of some coal company over in Montana. Witness did not recall ever having received any stock in the State Bank of Tenino as collateral, but is not prepared to swear that he did not receive that as collateral. Could not positively testify that the stock in the coal company was issued to W. Dean Hays. Did not recall that Hays and Blumauer and himself were all together at a conference in regard to taking care of the obligations of the Blumauer Company in the transaction between the Tenino bank and the United States National and the Merchant's National in Portland, but thinks it was discussed by each of them at different times. Mr. Blumauer was a heavy debtor of the United States National at that time, and we were carrying them to quite an extent, and witness felt at that time that he desired to protect Mr. Blumauer's credit just as well as he could. Mr. Blumauer stated that the Tenino State Bank was not in a position to take this paper up. The plan was proposed that Tenino was to draw its usual drafts on the United State National, payable to the Merchant's National and when that was returned to the United States National that they would carry it and when these drafts were presented in the ordinary manner that we would protect the drafts, notwithstanding their account was overdrawn. As far as the Blumauer Lumber Company was concerned and so far as Mr.

(Testimony of C. S. Gilchrist.)

Blumauer was concerned witness supposed it was their intention to make their arrangements with the State Bank of Tenino covering this draft, and then in turn for the State Bank of Tenino to have us carry it for them, but it was never done. It was witness' idea of the plan that was [112] agreed upon that when the drafts came back from Portland that then it would be charged to Tenino's account. The drafts were to be sent by me to Tenino in the ordinary course of business, go back at the end of the month. The drafts went back to Tenino cancelled and returned with a statement at the end of the month. Our statements show the drafts and cancelled vouchers returned. Did not know, as a matter of fact they were found with the paper and files of the United States National Bank. The statements showed these particular drafts were returned. Could not testify as to whether any of the statements he sent down showing this transaction was accepted by Tenino.

Redirect examination of Mr. GILCHRIST, by Mr. GOODALE, witness testified: The United States National Bank, during August and September, 1914 was a solvent, going concern. We had an arrangement for payment of a large amount of indebtedness of companies which have since gone into bankruptcy. The officers of the bank, however determined to close the doors by reason of the conditions prevailing brought on largely by the war that it might be advisable to increase the reserve by reduction of our bills receivable and in line with that we had arranged

(Testimony of C. S. Gilchrist.)

with the Eastern Railway & Lumber Company to bond their property with that of the Chester Snow Logging Company for \$250,000. Out of the proceeds of the bond issue we were to take up fully one hundred thousand dollars of paper of the Chester & Snow Logging & Shingle Company held by the United States National Bank and pay the indebtedness of the Eastern Railway & Lumber Company in addition to that. And in connection with that some twenty or thirty thousand dollars had been paid by the Lumberman's Trust Company of Portland who were under contract to take over the bonds. We had an arrangement with J. A. Vanness for the J. A. Vanness Lumber Company who was bonding his timber land at Winlock for one hundred twenty thousand dollars or one [113] hundred thousand dollars, fully one hundred thousand dollars. As possible that amount would have gone to have taken paper of the Clearwater Lumber Company upon which Mr. Vanness was an endorser. This transaction had reached the stage of the trust company with whom he was bonding, having paid him some thirty or forty thousand dollars. We had other arrangements for securing two hundred twenty thousand dollars from the correspondent banks in Tacoma, Seattle, and Olympia. Twenty-five thousand dollars had already been sent by the National Bank of Tacoma. The balance of the money was forthcoming upon the examination of the issue of certain letters of credit which was issued by myself on behalf of the United States National Bank in

(Testimony of C. S. Gilchrist.)

connection with the Winkleman bank company transaction and this transaction did not appear to be quite clear to the Bank of California of Tacoma. These three transactions, aggregating some four hundred thousand dollars. These deals fell through with because of the irregularities in the affairs of our bank. None of the directors had any knowledge of the Olympia transaction except Mr. Daubney. When I went to Olympia with the certificates of deposit, I expected that the stock had been sold for cash, and it was a surprise to me that it was not. The \$24,050 note was charged to the Union Loan & Trust Company. I directed that it be charged to the Union Loan & Trust Company and credited to the Olympia Bank & Trust Company. There was subsequent deposits made by the Olympia Bank & Trust Company with the United States National and these were added to the fifty thousand dollars credit already referred to. [114]

On cross-examination of Mr. GILCHRIST, by Mr. O'LEARY, he testifies: During the months of August, 1914, and September, 1914, and until the time the United States National Bank closed its doors, I was actively in charge of the United States National Bank as its vice-president. I was the person who managed the business principally. I was the active manager of the bank. I talked quite frequently with Mr. Hays over the telephone about the organization of the Olympia Bank. The manner was discussed in Tenino at first and at Centralia and Olympia. I went over to Olympia quite frequently

(Testimony of C. S. Gilchrist.)

to talk with Mr. Hays about the subject. The fifty thousand dollar certificate signed by Mr. Daubney was given to Mr. Hays in my presence in Olympia. Mr. Daubney and myself came over to see Mr. Hays about getting the Olympia Bank & Trust Company started. When we got to Olympia we found that the \$36,550 certificate had not as yet been subscribed for. It was my understanding that Mr. Hays ultimately was to have ten thousand dollars worth of stock and not to exceed fifteen thousand dollars, and when we went over the matter with Mr. Hays we received the understanding that there was \$36,550 worth of stock which had not yet been subscribed for. I understood that all of the stock of the Olympia Bank and Trust Company had to be paid for before the bank could open up and do business. The stock was to be turned over to us and subsequently was turned over to us, and so as to make the entries on our books balance we deemed it necessary to have him execute this note and attach this stock and send it over here making a total of fifty thousand dollars and we could certify to the amount being paid until we could arrange in some way to have the stock placed to the credit of the Olympia Bank & Trust Company. The understanding we had with Mr. Hays was that he was to subscribe for the balance of the stock of the Olympia [115] Bank & Trust Company. He told me that the various officers understood it. There was nothing said about the Olympia Bank & Trust Company subscribing for the rest of its own stock. That was

(Testimony of C. S. Gilchrist.)

impossible. He did not tell me that he was subscribing for the Olympia Bank & Trust Company stock as cashier of the Olympia Bank & Trust Company. He was subscribing for it in his personal capacity. The stock had not yet been issued. It was about seven to ten days after issuing the fifty thousand dollar certificate that the stock was turned over to us. We would not certify to the balance of fifty thousand dollars until we had something to show for it, so Hays sent the notes for \$36,550, and we took it through notes given by various organizers of the bank, and overdrafts aggregating \$48,000, the total amount of the notes was \$48,000. When we issued the fifty thousand dollar certificate we received forty-eight thousand dollars worth of notes, and two thousand dollars in cash. The stock was all issued to Mr. Hays. It was our understanding that we were to receive stock as collateral for the Hays notes. My understanding was that the stock was to be collateral for the two Hays notes, not for the others. We did not ask for security on the other notes for eleven thousand four hundred fifty dollars. I took into consideration the fact that he had associated with him the highest state officials and men who were held in high esteem by me personally. I was willing to take all of the notes given me at the time except the Hays notes without any security at all. That day when I came up I was anxious to have the bank started at any early date, to have it started and get through with it. When I drove over on the 19th of August I brought \$2,500 cash

(Testimony of C. S. Gilchrist.)

with me, so the bank could open its doors. That was on the 19th of August. The understanding was that Mr. Hays at no time would become interested to exceed fifteen thousand dollars in the Olympia Bank [116] & Trust Company. It was really thought he would take only ten thousand dollars. I knew he did not have cash to pay for the ten thousand or fifteen thousand dollars of stock. This goes back to the point of where he represented he was selling his interest in the State Bank of Tenino to me. I came over thinking Mr. Hays would not subscribe for more than ten thousand or fifteen thousand dollars worth of stock and brought twenty-five hundred dollars with me, and when I found that Hays was subscribing for \$36,550 worth of stock I did not change my plans with reference to going ahead and financing the thing. I hesitated about going ahead with it, but he represented that these various men had already gone into it and he had certainly convinced them that he was able to handle the situation. I then consented to carry out the plans along the lines that we did. We expected they would carry a desirable account with us. We naturally expected that we would receive a fairly good account from the Olympia Bank & Trust Company. We expected to be their main correspondent and to carry what idle money they had with us. We expected they would carry a substantial amount in our bank until such time as the Olympia Bank took up the stock certificates and Hays notes, and that was one of the reasons why we were interested in

(Testimony of C. S. Gilchrist.)

the bank. But was not the chief reason, there was another reason. We were heavily interested in the Tenino State Bank that had been managed by Mr. Hays. We could ill afford to see the State Bank of Tenino forced to the wall and from indications and examinations I had made I had felt that it was rather necessary that we give our attention to the State Bank of Tenino to get it straightened up in shape. The organization of the Olympia Bank & Trust Company, Mr. Hays being the active manager there would certainly have arranged in some way to protect some of the paper in the State Bank of Tenino, which he owned. If it was necessary [117] to take over some of the paper he would have taken it over. That was another reason. It would have been another outlet for the Tenino bank. Another place where the Tenino paper could have been shifted I was interested in other banks in the southwestern part of the state, The Union Loan & Trust Company of Centralia and the Willapa Harbor State Bank at Raymond. The United States National was a correspondent of these banks. The Union Loan and Trust Company was a bank in which I was a stockholder. When the \$24,050 note came into the hands of the United States National Bank the Olympia Bank & Trust Company was given credit for it. It was one of the items that made up the \$48,000 item that the United States National Bank gave the Olympia Bank & Trust Company credit for when the Olympia Bank & Trust Company opened its doors. The \$24,050 Hays note was

(Testimony of C. S. Gilchrist.)

transferred from the United States National Bank after it had given the Olympia Bank & Trust Company credit for that amount to the Union Loan & Trust Company. When Blumauer called me up about the six thousand dollars remitted to Seattle and the other two thousand dollar items, I told him we could do nothing with it, but I would call up Mr. Hays and have him take care of it. I did not tell Mr. Blumauer to take it up with Mr. Hays himself. I told Hays to take care of these drafts and send the money to Seattle for the credit of Tenino without saying anything to him at all how the amounts were to be ultimately charged. As to the three notes aggregating nine thousand five hundred dollars, spoken of as the Blumauer notes consisting of two notes of the Blumauer Lumber Company in the sum of thirty-five hundred dollars each, and the note of T. H. McClafferty for twenty-five hundred dollars, Mr. McClafferty was a man who worked for Mr. Blumauer, an official in the Blumauer Lumber Company. This was paper that had been taken by us from the State Bank of Tenino. It was charged [118] up against the Olympia Bank & Trust Company, September 4, 1914. Our bank remained open for three weeks after that and still we never sent the notes to the Olympia Bank & Trust Company and we never notified them. All of our charges made back and forth between the United States National Bank and the Olympia Bank & Trust Company were confirmed by letter. This was the only transaction that was not confirmed by letter. I ex-

(Testimony of C. S. Gilchrist.)

pected to get renewal notes before sending them to the Olympia Bank & Trust Company. We did not expect the Olympia Bank & Trust Company to buy the notes which were found in the United States National at the time it went into the hands of a receiver. It was my intention to forward the Olympia Bank & Trust Company the new paper after I got it. The renewal notes in lieu of these Blumauer notes which I expected to sent to the Olympia Bank & Trust Company were never executed. The notes that the Olympia Bank & Trust Company were going to buy were the new notes, and it was not going to take a lot of old paper. I never considered for one minute that W. Dean Hays would personally take up that paper. We went over the situation and he satisfied me of the situation. I thought it strange that they would go ahead and let him subscribe for this stock. They knew his financial condition as well as I did and they knew he did not have the ability to take over thirty-six thousand dollars, and when I knew that, and knew about the taking over of stock and notes I was loath to do that and hesitated a long time. Mr. Hays was to dispose of this stock as quickly as he could, and from the representations he made I had every reason to believe that it would be taken up very quickly. I expected Mr. Hays to sell a part of the \$36,500 worth of stock. I was a witness in the case tried in the Superior Court of the State of Washington, being cause No. 5636, entitled State of Washington, plaintiff, vs. W. Dean Hays, defend-

(Testimony of C. S. Gilchrist.)

ant, a criminal case [119] and was a witness. I was sworn as a witness and testified to having a conversation with Mr. Hays during the time he was organizing the bank relative to the purpose of having this stock issued in his name and why it was. I was asked the following questions in that case. "Do you think you could recall the exact terms of such conversation, or would you be able to recall in substance?" And I answered: "Well, I will have to relate in a general way if that will answer the purpose. At the time these notes were accepted it was the thought and understanding on my part that Mr. Hays could and would dispose of the various, of a considerable amount of the stock to definite individuals. And at one time he submitted a list to me of various persons with whom he had discussed the question of taking stock. He felt very confident of their ability to place the stock, and while the amount referred to was very much in excess of that we had discussed at previous times, I felt rather sure of his ability to place the greater amount of the stock in a reasonable time due to the fact of his having associated with him some very prominent men in this city, and it was deemed advisable at that time to have the stock drawn in certificates, small denominations. As I have said, he at one time he submitted a list of numerous persons that contemplated taking stock. As I understand it, these certificates were then drawn in small denominations. Does that answer the question?" Mr. Hays told me that he subscribed to the \$36,550 worth of stock per-

(Testimony of C. S. Gilchrist.)

sonally. I had no other means of knowing except what he told me. I never had any dealings with anyone with reference to the forty-eight thousand dollars of notes or fifty thousand dollars original credit with the Olympia Bank & Trust Company, except with Mr. Hays. The only one I dealt with was Mr. Hays, and all I knew about the matter was what Mr. Hays told me. The notes were signed by W. Dean [120] Hays. At the time these notes were given the Olympia Bank & Trust Company had been organized. It could not do business however until it got the certificate from the bank examiner. I am serving sentence in the United States Penitentiary at McNeil's Island for the commission of a crime connected with the affairs of the United States National Bank. I am not familiar enough to say whether I was convicted of three different felonies or one, or whether the one transaction was covered by three charges.

On further cross-examination by Mr. VANCE, witness testified: I had no consultation with Mr. Hays' associates but from the knowledge that he was placing the stock and in line with that I said perhaps it would be well for you to subscribe for the stock of this corporation. Then I stopped and thought a minute about having him sign as agent or trustee. I perhaps used both words, I stopped and hesitated a minute and thought if any difficulty arose it would only bring up the necessity of showing who he was trustee for, and I said perhaps you had better

(Testimony of C. S. Gilchrist.)

not use that term at all. You would better subscribe in your own name and take the stock.

On redirect examination of Mr. GILCHRIST by Mr. GOODALE, witness testified as follows: Witness would say this five thousand dollars was practically a renewal of the two thousand dollars, the original loan, because that was specially referred to when he made application for the five thousand dollars, that it was for the purpose of taking up the two thousand dollars. It is usual for all banks to protect the credit of their clients in every instance.

On recross-examination of Mr. GILCHRIST by Mr. VANCE, witness testified as follows: I had no agreement with anybody except Mr. Hays. I don't mean to be understood that Mr. Hays was signing the note as trustee [121] for the Olympia Bank & Trust Company. I did not testify on the former trial that Hays had authority to sign as trustee.

Testimony of J. A. Vaness, for Defendant.

J. A. VANESS, being a witness called on behalf of the defendant, after having been first duly sworn, on interrogatories propounded by Mr. GOODALE, testified as follows:

My name is J. A. Vaness. Am one of the directors of the United States National Bank of Centralia and was on the 14th day of September, 1914. I do not have any knowledge of any transaction by which the United States National Bank advanced any of its funds to the credit of the

(Testimony of J. A. Vaness.)

Olympia Bank & Trust Company. The first time I learned of it was at a meeting in Judge Dysart's office.

**Testimony of George Dysart, for Defendant
(Recalled—Cross-examination).**

GEORGE DYSART, having heretofore been sworn was recalled for further cross-examination, and testified as follows, when interrogated by Mr. VANCE:

Identifies minutes of meeting of the board of trustees which he testifies are correct except that the date is wrong. The meeting, the witness testifies was several days before the 19th. The following portion of the minutes of the United States National Bank read in evidence:

“Directors, Meeting, September, 19, 1914.

Directors called at request of the cashier, president George Dysart, J. A. Vaness and J. W. Daubney. General discussion was had regarding the affairs of this bank and condition was such that it was unanimously voted to wire the national bank examiner.” Signed by myself as vice-president and attested by J. W. Daubney, Cashier.

Also minutes of the United States National Bank of date September 21, 1914, read in evidence, as follows: [122]

“The minutes of September 21, 1914: A special meeting of the board of directors of the United States National Bank of Centralia, Washington was held at the bank on the morning of the above date. The following above-named directors were present, Charles

(Testimony of George Dysart.)

Gilchrist, George Dysart, and J. W. Daubney, being a majority of the said board of directors. On motion of George Dysart, the following resolution was adopted: 'whereas upon due consideration of the board of directors, it appears to the satisfaction of the board that the United States National Bank of Centralia is in a failing condition, and that it is unable to pay the depositors in the ordinary course of business, therefore it is resolved that the officers of this bank be instructed to close the doors of the said bank and deliver the management of the said bank to the United States Bank Examiner, Roy L. Mult.'

Signed Charles Gilchrist, J. W. Daubney and George Dysart."

The bank examiner did not want to close the doors but matters came up that made it clear to my mind that if we opened the bank Monday morning we would have a run. I do not mean to contradict the recitation of the minutes as follows:

"Upon due consideration of the board of directors it appears to the satisfaction of the board that the United States National Bank is in a failing condition and unable to pay its depositors in the ordinary course of business." On Saturday afternoon and Sunday we had practically undone what we had done in the way of getting money. We had stopped the process of getting more money and building up the reserve.

**Testimony of Frank A. Hill, for Defendant
(Recalled).**

MR. FRANK A. HILL, having heretofore been sworn, was called on behalf of the defendant and testified as follows, on interrogatories propounded by Mr. GOODALE:

With reference to Plaintiff's Exhibit 5 it shows the account between the Olympia Bank & Trust Company and the United States [123] National Bank as shown by the books of the United States National Bank. It is a copy of the ledger account between the Olympia Bank & Trust Company and the United States National Bank. Transcript of the book that I referred to. There is a charge against the Olympia Bank & Trust Company which the receiver of the United States National Bank has made or attempted to make in the account with the Olympia Bank & Trust Company, which does not appear on the books of the United States National and is not shown upon the statement. The charge is of \$11,450 made up of stockholders notes of the Olympia Bank & Trust Company. These are notes taken as part of the \$48,000 credit, which was on August 19.

Mr. Goodale offers in court to return those notes to the receiver upon proper credit being made by cutting off that \$11,450.

Attorneys for plaintiff and intervenors reserve the right to pass on the offer until the following morning.

The books of the United States National Bank say there is a credit due the Tenino State Bank of three

(Testimony of Frank A. Hill.)

thousand five hundred eighty dollars and twenty-one cents. In addition to this credit is due them for the remittance on the 19th which we had charged to their account. The remittance of the 19th was for three thousand thirty-six dollars and ninety-four cents, but in that remittance was a certified check for two thousand dollars, which is a charge as I understand from counsel this morning, and they are willing to admit a two thousand dollar charge. That leaves the balance of credit due them on that transaction of ten hundred thirty-six dollars and ninety-four cents. That is to be added to the three thousand dollars already referred to. Then there was another remittance on the 19th of checks which we had cashed, the United States National Bank had cashed, drawn on the Tenino State Bank, and they were [124] forwarded to the Tenino State Bank but reached there after that bank had closed, consequently were returned to the United States National Bank and the receiver has received credit or its equivalent for these items. There is two hundred and sixteen dollars and ninety-eight cents credit due the Tenino State Bank on that, that has to be added to the other two items mentioned. That represents the items that were sent the Tenino State Bank and were returned, and they are now entitled to credit for. Then the checks six hundred seventy-seven dollars seems a credit should be given them on that. The credit claimed by the Tenino bank and disputed by the receiver of the United States National Bank is five thousand dollars on account of the Dean Hays note and twenty-five hundred dollars on account

(Testimony of Frank A. Hill.)

of these drafts. One draft for one thousand dollars and three drafts for five hundred dollars each, the Blumauer drafts. These are additional credits claimed by the receiver of the State Bank of Tenino. The total indebtedness of the United States National Bank to the Tenino bank, omitting the credits which are claimed by the Tenino, are five thousand five hundred and eleven dollars and thirteen cents. That is the United States National Bank account due the Tenino State Bank. That does not take into account the Tenino bank's claims that Centralia disputes. As against that amount of five thousand five hundred and eleven dollars there is a dispute over the item of the note of W. Dean Hays, exactly in the amount of five thousand dollars. If the court should consider that the five thousand dollars was an improper and illegal charge by the United States National Bank against the Tenino bank the indebtedness of the United States National would be five thousand dollars larger. We have already charged their account and they want credit given back for it. The items claimed by the Olympia Bank against the United States National Bank aren't taken into account here. If the Court [125] should be of the opinion that neither of those items claimed by the Olympia bank as charges against the United States National ought to be allowed by the Olympia Bank against the United States National, they would become credits to the Olympia Bank & Trust Company, have a tendency to raise their balance with the United States National Bank and decrease the balance of the Tenino State Bank. In

(Testimony of Frank A. Hill.)

other words what the United States National Bank represents was that any money that was sent from Olympia to Tenino was the money of the Olympia bank and that therefore the Olympia bank should look to Tenino for it, and if it should be held that any part of that was our money, was merely sent, it was merely a payment from the Olympia bank then that amount would have to be credited by the Tenino bank to us and would reduce our indebtedness to the Tenino bank. The other items in dispute as between the Tenino bank and the United States National are the drafts for twenty-five hundred dollars. These are charges which have already been made by the United States National Bank and deducted from their account and they are deducted in arriving at this balance of five thousand, five hundred and eleven dollars. Those make up all of the items in dispute except one or two very small little items that doesn't amount to anything either way.

On cross-examination of witness by Mr. OWINGS, he testified as follows: He struck a balance of three thousand five hundred and eighty dollars and twenty-one cents then a credit was given Tenino of three thousand and thirty dollars and ninety-four cents for certain remittances, and two thousand of that was deducted on account of the certified check of Campbell & Campbell, so that in ascertaining this balance of ten hundred thirty-six dollars and ninety-four cents there can properly be added to this three thousand five hundred and eighty dollars. There was an item of two

(Testimony of Frank A. Hill.)

hundred sixteen dollars and ninety-eight cents that [126] a similar transaction that was allowed and has to be added and there was six hundred seventy-seven, a check that was drawn on the Seattle National, which has now been conceded by the defendant and that may be added to our balance. It is in that way that witness arrives at the figure five thousand five hundred and eleven dollars and thirteen cents. If the Court determines that the five thousand dollars that there was no right on the part of Mr. Gilchrist to charge to the Tenino bank, that should be added, and if the Court determines that the liability on the drafts should be charged to Centralia then that should be added and if the Court connected the United States National and the Tenino State Bank with the six thousand dollar transaction as a liability of Tenino, that should be deducted. There isn't any dispute about any of these except the five thousand dollar note and the four drafts, one for one thousand dollars and three for five hundred dollars. The books of the bank don't show that that six thousand dollars transaction was transacted by the United States National on the books of the United States National at all.

Upon redirect examination of Mr. Hill by Mr. GOODALE, he testified as follows: Testifying from the General ledger of the United States National Bank of Centralia, page 209, on November 25, 1913 the State Bank of Tenino was given credit for five thousand dollars the proceeds of the Hays note which

(Testimony of Frank A. Hill.)

was discounted on that day, the renewal of which is the note in evidence before this Court.

Upon recross-examination of Mr. Hill by Mr. OWINGS, he testified as follows: Witness would say as a bookkeeper, in view of the testimony which he has heard here that the five thousand dollars was credited Tenino's account at that time. That must have been the transaction of discounting the note. This note which is in evidence together with one hundred thirty-three dollars and [127] thirteen cents was charged to the account of the State Bank of Tenino on the 15th day of July, 1914. Credit was given the State Bank of Tenino on the 16th for five thousand dollars. The 16th of July, 1914 and on the 24th of July the State Bank of Tenino was again charged five thousand dollars, so the transaction when you get through was one charge of five thousand dollars.

On cross-examination by Mr. TROY, witness testified as follows: This Plaintiff's Exhibit 5 the paper I testified to yesterday was made by Mr. Ross Daubney after the bank closed. We had several clerks and this is his work. I remember the circumstances of its being delivered to Mr. McKinney the receiver. I was present. The forty-eight thousand dollar credit here includes eleven thousand, four hundred fifty dollars worth of notes of the other stockholders of the intervenors. And that is not charged on the opposite side. None of the notes of the intervenors are charged. This charge of eleven thousand, four hun-

(Testimony of Frank A. Hill.)

dred fifty dollars, Plaintiff's Exhibit 5 is one that has been made by the receiver. It is a deduction that we draw from the circumstances as to the relation between the two banks and was not charged upon the books.

On cross-examination by Mr. VANCE, witness testified: The balance due to the State Bank of Tenino by the United States National Bank of Centralia on the 18th is shown by the books of the United States National Bank, on the 17th was fifteen hundred and twenty-five dollars; on the 18th six thousand, five hundred and twenty-nine dollars on the 19th three thousand, five hundred eighty dollars and twenty-one cents.

Whereupon defendant rests.

**Testimony of W. Dean Hays, for Plaintiffs
(Recalled in Rebuttal).**

W. DEAN HAYS, recalled in rebuttal by plaintiffs and intervenors interrogated by Mr. VANCE, on direct examination testified as follows: [128]

I did not have a conversation with Mr. Gilchrist over the telephone in which he told me it was my business that I was to take care of the State Bank of Tenino by my own credit.

On cross-examination by Mr. GOODALE, witness further testified: I testified before that he called me up to make this remittance. He did not use the words it was up to me to send it. Mr. Gilchrist told me to remit for the United States National Bank.

**Testimony of Roy A. Langley, for Plaintiff
(Recalled).**

ROY A. LANGLEY, having been heretofore sworn, was recalled on behalf of the plaintiff Tenino State Bank, and on being examined by Mr. OWINGS testified as follows: Witness had heard the testimony of Mr. Gilchrist as to the charging back and forth of the five thousand dollar Dean Hays note. Witness does not think there would be anything out of the ordinary for a banker to credit a note of that kind to a banking institution when as a matter of fact the proceeds were to be used by an individual like Mr. Hays. It would be proper. Probably if he borrowed that money in Centralia he would not want to carry it up there in money, he would take it, have it at the bank and draw his checks on Tenino for it.

On cross-examination by Mr. VANCE witness testified as follows: I am familiar with the ledger and general accounts of that bank as they are shown for the month of September, 1914. The Blumauer Lumber Company and the Blumauer Logging Company and the Tenino Lumber and Manufacturing Company did not have any account with the State Bank of Tenino. None of them carried an individual account that is a checking account or certificate account.

On cross-examination by Mr. GOODALE: These companies were all under the same control. There was no checking account in any other name used for them they had no notes in the bank at the time I took charge of it. [129]

Testimony of Mr. Hill, for Plaintiff (Recalled in Rebuttal).

Mr. HILL, having been heretofore sworn was recalled in rebuttal on behalf of the plaintiff and intervenors, and testified as follows: Interrogated by Mr. VANCE:

On July 24, in the column marked D. R. it is shown that the long and short account was fourteen hundred fifty-nine dollars and fifty-seven cents. It indicates rather a careless manner of keeping accounts. This is the long and short account of the United States National Bank. The books of the United States National Bank on the 15th of January, 1914 show the following conditions of the long and short account:

“On the 15th of January, 1914, they credited the account \$5.00; on the 6th of February they credited the account \$100.00; on the 9th of February they credited the account \$18.25; on the 30th of March they credited the account \$49.00; on the 8th of April they credited the account \$167.49; on the 22d of April they credited the account \$100.00 and on the 27th they debited \$95.00; on the 5th,—on the 6th of May they credited the account \$25.00 on the 24th of July they debited the account \$14.25; on the 15th of July they credited the account \$100; on the 24th of July they debited the account \$1,459.57; and credited the account with \$227.30; on the 25th of July they debited the account \$35.00; on the 28th debit \$80.00; on the first of August debit \$50.00; on the 6th of August credit \$5.54; on the 7th of August credit \$10.00; on the 13th they credited \$41.29; on the 16th

(Testimony of Frank A. Hill.)

of August they debited the account \$86.00; on the 19th of August they debit the account \$240.00; on the 15th of September they credit it \$375.00; on the 17th \$142.00 on the 18th \$133.00.”

Whereupon the plaintiff rests, the intervenors rest, the Tenino State Bank rests and the defendant rests.

Testimony closed and no further evidence was offered on either side. [130]

Certificate of Cushman, D. J., to Statement of Evidence.

THIS IS TO CERTIFY that the foregoing and annexed condensed statement of evidence herein, came on regularly before the above-entitled court, upon notice, for approval, on the 30th day of October, at the hour of 2 o'clock P. M., and it appearing to the Court that all parties had notice thereof, and that there are no objections thereto, and the Court being duly advised now hereby approves the said foregoing and annexed condensed statement of the evidence herein and certifies the same as a statement of the evidence to the Circuit Court of Appeals, Ninth Circuit, holding terms at San Francisco, California.

Dated October 30, 1916.

EDWARD E. CUSHMAN,
Judge.

(Filed Oct. 30, 1916.) [131]

**Notice of Application for Consolidation of Causes,
etc.**

To the Above-named Defendant and to His Attorneys, R. P. Oldham and R. C. Goodale.

You are hereby notified that the undersigned solicitors for the complainant will present the application for consolidation herein and for enlargement of time to the Court at the incoming of court on July 27th, 1916.

P. M. TROY,
R. F. STURDEVANT,
Solicitors for Complainant.

Service of the foregoing notice admitted this 22d day of July, 1916, to the hearing of the said application and motion.

R. P. OLDHAM,
R. C. GOODALE,
Attys. for A. R. Titlow, as Recv.

(Filed July 27, 1916.) [132]

Application for Consolidation of Causes, etc.

Comes now the complainant and applies to the Court for an enlargement of the time for the filing of a transcript on appeal in the above-entitled cause, and an extension of the said time to September 20th, 1916.

This application is based upon the records and files herein and the affidavit of P. M. Troy one of

the solicitors for the complainant annexed hereto.

P. M. TROY,

R. F. STURDEVANT,

Solicitors for Complainant. [133]

(Filed July 27, 1916.)

Application.

Comes now the complainant by his solicitors, P. M. Troy and R. F. Sturdevant, and applies to the court for a consolidation of the above-entitled cause with that certain cause pending in the above-entitled court wherein Roy A. Langley as receiver of the State Bank of Tenino, Complainant, vs. A. R. Titlow, as receiver of the United States National Bank of Centralia, Defendant, the same being cause No. 50-E, in Equity in the above-entitled court, so that but one transcript and one record may be used on the said appeal and one set of briefs.

This application is based upon the records and files herein.

P. M. TROY,

R. F. STURDEVANT,

Solicitors for Complainant.

We consent to the foregoing consolidation.

FRANK C. OWINGS,

Solicitor for Complainant Roy A. Langley in Cause
No. 50-E.

THOS. L. O'LEARY,

Solicitor for Intervenors.

(Filed July 27, 1916.) [134]

Affidavit of P. M. Troy.

State of Washington,
County of Thurston,—ss.

P. M. Troy, being first duly sworn, deposes and says: That he is one of the solicitors for the complainant herein; that the stenographer has just completed transcribing the testimony herein; that the same amounted to over six hundred pages, to wit, to 621 pages; that the said transcript of testimony has just been delivered to solicitors for the complainant herein; that the solicitors for complainant have had no opportunity nor time to reduce and condense the testimony herein in compliance with equity rule No. 75, and that your solicitors have had no opportunity or time to reduce and prepare the record in compliance with the said rule; that it is necessary that they have until the 20th day of September, 1916, for the purpose of preparing the transcript herein.

Furthermore affiant saith naught.

P. M. TROY.

Subscribed and sworn to before me this 26 day of July, 1916.

[Seal]

R. F. STURDEVANT,

Notary Public in and for the State of Washington,
Residing at Olympia.

(Filed July 27, 1916.) [135]

**Order Extending Time to File Transcript to
September 20, 1916.**

This matter coming on to be heard on the application to enlarge the time to file the transcript herein, and it appearing to the Court that there is good cause for the enlargement of time, the Court does now hereby extend and enlarge the time to file the transcript herein to and including September 20th, 1916.

Dated July 27th, 1916.

EDWARD E. CUSHMAN,
District Judge.

(Filed July 27, 1916.) [136]

Order Consolidating Causes for Hearing.

This matter coming on to be heard on the application of the complainant for consolidation of the above-entitled cause with cause No. 50-E entitled Roy A. Langley, as receiver of the State Bank of Tenino, Complainant, vs. A. R. Titlow, as receiver of the United States National Bank of Centralia, defendant, for the purposes of appeal, so that but one transcript and record may be used on said appeal, and one set of briefs, and the Court being familiar with the record herein, and the said causes having been consolidated for the purpose of trial in the above-entitled court at the time of the trial, and the Court being duly advised, now grants the said application, and it is ordered that the above-entitled cause be consolidated with the said Cause No. 50-E

for the purpose of appeal, and that but one transcript and record and one set of briefs may be required and used on the said appeal.

Dated July 27th, 1916.

EDWARD E. CUSHMAN,
District Judge.

(Filed July 27, 1916.) [137]

**Plaintiff's Exhibit No. 1—Articles of Incorporation
of Olympia Bank & Trust Co.**

Article No. 36290. Certified Copy No. 9699.

UNITED STATES OF AMERICA.

THE STATE OF WASHINGTON.

DEPARTMENT OF STATE.

TO ALL TO WHOM THESE PRESENTS SHALL
COME,

I, I. M. HOWELL, Secretary of State of the State
of Washington and custodian of the seal of said
State, do hereby certify that I have carefully com-
pared the annexed copy of the

**ARTICLES OF INCORPORATION
of the**

“OLYMPIA BANK & TRUST COMPANY,”
with the original copy of said Company's Articles
of Incorporation now on file in this office, and find
the same to be a full, true and correct copy thereof,
and of the whole of said original, together with all
official endorsements thereon. And I further certify
that the said original Articles appear to have been
duly and regularly filed in this office, according to
law, and that the same are of a genuine, valid, and

subsisting character, and that this certificate is in due form and by the proper officer having the legal custody of said original and the requisite official knowledge relative thereto.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Washington, Done at the Capital, at Olympia, this 8th day of Dec., A. D. 1914.

[Seal]

I. M. HOWELL,
Secretary of State.

By J. GRANT HICKS,
Assistant Secretary of State. [138]

Comp'd M G A, O. to J. M. C.
No. 36290.

KNOW ALL MEN BY THESE PRESENTS, THAT WE, the undersigned, C. S. Reinhart, I. M. Howell, Chas. E. Hewitt, W. T. Cavanaugh, W. Dean Hays, C. Will Shaffer, H. T. Jones, all of Olympia, Washington, citizens of the United States, being desirous of forming a bank and trust company under the laws of the State of Washington, do hereby make, execute and acknowledge in quadruplicate, the following Articles of incorporation and certificate of organization, and do hereby certify as follows, to wit,

ARTICLE I.

The name assumed by this company and by which it shall be known is "Olympia Bank & Trust Company."

ARTICLE II.

The place where the business of this corporation is to be transacted and where its bank is to be located

and its business conducted, is Olympia, County of Thurston, State of Washington.

ARTICLE III.

The nature of the business for which this corporation is formed shall be and is that of a trust company and commercial and savings bank to engage in and carry on a general trust and banking business in said City of Olympia, State of Washington, and to exercise all such powers and rights and privileges as shall be lawful, necessary or proper in carrying such business.

ARTICLE IV.

The capital stock of this corporation shall be and is Fifty Thousand dollars (\$50,000), divided into Five Hundred (500) shares of the par value of One hundred dollars (\$100) each.

ARTICLE V.

The period of existence of this corporation shall be and is fifty years (50).

IN WITNESS WHEREOF, We the said incorporators, have hereunto [139] set our hands and seals this 14 day of Aug., 1914.

C. S. REINHART.

I. M. HOWELL.

H. T. JONES.

CHAS. E. HEWITT.

W. T. CAVANAUGH.

W. DEAN HAYS.

C. WILL SHAFFER.

State of Washington,
County of Thurston,—ss.

I, Harry L. Parr, a notary public in and for the State of Washington, residing at Olympia, duly commissioned, sworn, and qualified, do hereby certify that the aforementioned incorporators, who are personally known to me to be the identical persons signing the within instrument, appeared before me this day in person and acknowledged that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Dated at Olympia, Washington, this 14 day of Aug., 1914.

HARRY L. PARR,
Notary Public, Residing at Olympia, Washington.

[Harry L. Parr, Notary Public, State of Washington, Commission Expires Apr. 26, 1918.]

(Endorsement:)

State of Washington,—ss.

Filed for record in the office of the Secretary of State Aug. 19, 1914, at 3:56 o'clock P. M. Recorded in Book 104, page 201, Domestic Corporations.

I. M. HOWELL,
Secretary of State.

(Filed Dec. 15, 1915.) [140]

**Plaintiff's Exhibit No. 2—Certificate of State
Examiner re Olympia Bank and Trust Co.**

STATE OF WASHINGTON.

To all to whom these Presents shall come, GREET-
ING:

The State Examiner of the State of Washington hereby certifies that Olympia Bank & Trust Company located at Olympia, County of Thurston, and State of Washington, has complied with all the provisions of an Act of the Legislature of the State of Washington, entitled "An Act to provide for the formation of banking corporations and to regulate the business of banking and securing State supervision thereof; for the appointment of a State Examiner, defining his duties, fixing his compensation and making an appropriation therefor; and prohibiting the use of the words "Bank," "Trust" and "Savings" in advertising business by persons, firms and associations not hereby brought under State supervision, and fixing a penalty for its violation."

NOW THEREFORE, in pursuance of law, I, W. E. HANSON, State Examiner of the State of Washington, do issue this Certificate of Authority to the above-named corporation to commence the business of banking as defined in said Act.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Olympia, this 20th day of August, A. D. 1914.

[Seal]

W. E. HANSON,
State Examiner.

State of Washington,
County of Thurston,—ss.

I hereby certify that this is a true and correct copy of charter issued to the Olympia Bank & Trust Company on August 20, 1914, by W. E. Hanson, State Bank Examiner.

R. LEE (?),
Secretary.

(Filed Dec. 15, 1915.) [141]

**Plaintiff's Exhibit No. 3—Proof of Claim of
Receiver of State Bank of Tenino.**

DEBIT	Centralia (23)	
	R. to Seattle 6000	
	for Tenino	6000.

Sep. 12, 1914. 191—

(Filed Dec. 15, 1915.) [142]

Plaintiff's Exhibit No. 4—Draft of United States National Bank.

Olympia, Wash., _____.

M U. S. Natl. Bank—Centralia

In Account with **THE OLYMPIA BANK AND TRUST CO.**

Please examine and report promptly.

Dr.

Cr.

1914.

Rem. to Seattle	✓	2000	✓	✓	Aug. 19	Coin	2500	✓	✓
" " Tacoma	✓	5000	✓	✓	25	Rem. Seattle	1000	✓	✓
" " Seattle	✓	3795	✓	✓	Sept. 3	Draft	1000	✓	✓
"	✓	160.38	✓	✓	5	Stock sold	1100	×	o
"	✓	255.95	✓	✓		" "	400	×	o
"	✓	358.10	✓	✓	8	" "	330	×	o
"	✓	12500.	✓	✓	11	Draft	3000	✓	✓
"	✓	147.25	✓	✓	14	"	5000	✓	✓
"	✓	147.	✓	✓					

40000

" to Seattle	✓	2000.	✓	✓	Bal.	89169.26
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Capl. & Und. Profits

	×	55000.	?	o
Rem.	✓	216.60	✓	✓
"	✓	52.	✓	✓
Tel. Tfr to Tacoma	✓	2000.	✓	✓
Cost of Telegram	×	.35	o	✓
Rem.	✓	56.50	✓	✓
"	✓	94.65	✓	✓
"	✓	338.30	✓	✓
" to Tacoma	✓	4000.	✓	✓
"	✓	377.18	✓	✓
" Seattle	✓	5000	✓	✓
" Seattle for Tenino				
	×	6000.	o	
" " " "	×	2000.	o	
Coin " "	×	2000.	o	

103499.26

103499.26

and Dec. 15, 1915).

89169.26

103499.26

2500

7000

48000

1000

82169.26

55499.76

8

12500.

**Plaintiff's Exhibit No. 6—Order of Superior Court
in State of Washington vs. Olympia Bank and
Trust Co. Granting Leave to Receiver to Sue,
etc.**

*In the Superior Court of the State of Washington in
and for the County of Thurston.*

STATE OF WASHINGTON, on the Relation of
W. V. TANNER, as Attorney General,
Plaintiff,

. vs.

OLYMPIA BANK & TRUST COMPANY, a Corpo-
ration,

Defendant.

The Court being duly advised, now gives the re-
ceiver herein leave to sue C. A. Snowden, as receiver
of the United States National Bank.

This order is granted herein upon the application
of the receiver of the said Olympia Bank & Trust
Company made this day and which is on file herein.

Dated this 18th day of Feby., 1915.

JOHN R. MITCHELL,
Judge.

State of Washington,
County of Thurston,—ss.

I, A. C. Baker, Dep. County Clerk of Thurston
County and ex-officio Clerk of the Superior Court of
the State of Washington, for Thurston County, hold-
ing sessions at Olympia, do hereby certify that the
foregoing is a true and correct copy of the original

Order in Cause No. 5628, State Ex rel. W. V. Tanner, vs. Olympia Bank & Trust Co., as the same appears on file and of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 20th day of December, 1915.

(Seal) A. C. BAKER,
Dep. County Clerk and Clerk of the Superior Court
of Thurston County, State of Washington.

(Doc. Int. Rev. stamp cancelled.) [145]

**Petition for an Order Allowing Appeal of C. Will
Shaffer, etc.**

PETITION FOR APPEAL FILED THE 31st
DAY OF JULY, 1916.

*In the District Court of the United States for the
Western District of Washington, Southern Divi-
sion.*

To the Honorable EDWARD E. CUSHMAN, Dis-
trict Judge of the Above-entitled court:

The above-named intervenors, feeling themselves aggrieved by the decree made and entered in the cause on the 31st day of January, 1916, do hereby appeal and do join in the appeal of the complainant in the above-entitled cause from the said decree to the Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that their appeal be allowed and that citation issue, as provided by law, and that a transcript of the record, proceedings and papers upon

which said decree was based, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

And your petitioners further pray that the proper order touching the security to be required of them to perfect this [146] appeal be made.

C. WILL SHAFFER,

C. S. REINHART, T.,

Intervenors.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of \$500.

EDWARD E. CUSHMAN,

United States District Judge.

(Filed July 27, 1916.) [147]

Assignment of Errors of C. Will Shaffer.

And now on this 31st day of July, 1916, comes the intervenors, by the intervenor C. Will Shaffer, and claim that the Decree entered in the above-entitled cause on the 31st day of January, 1916, is erroneous and unjust to Intervenors:

First. For refusal to grant the relief prayed for in the complainant's first cause of action, to wit, for a credit of \$36,550 in the United States National Bank of Centralia, Washington.

Second. For the refusal to grant the relief prayed for in complainant's second cause of action, to wit, for a credit of \$10,000 in the United States National Bank of Centralia, Washington.

Third. For cancelling and holding void a credit of \$48,000 in the United States National Bank of Centralia, Washington, in favor of the Olympia Bank & Trust Company.

Fourth. For returning to the complainant certain notes according to the demand of the complainant of intervention but refusing to establish a trust fund of moneys deposited [148] in the United States National Bank by the Olympia Bank & Trust Company as demanded by Intervenor's cause of action.

Fifth. That all of the claims on the part of the complainant and Intervenor to a preferred and prior claim against the assets in the hands of the defendant receiver were denied with prejudice, but should have been allowed.

Sixth. That the complainant was allowed a general claim against the defendant as receiver in the sum of \$25,998.91 and no more on the accounting herein, when the complainant should have been allowed the sum of \$83,998.91.

Seventh. For holding that the United States National Bank was not bound by the conduct of the managing officers and directors when such officers and directors connived with and demanded of the cashier of the Olympia Bank & Trust Company that he, the cashier of the Olympia Bank & Trust Company, use the funds of the Olympia Bank & Trust Company in the United States National Bank to cancel the private debt of the said cashier in the United States National Bank.

Eighth. That complainant and intervenors were not allowed their costs in said action.

C. WILL SHAFFER,

C. S. REINHART, T.,

Intervenors.

(Filed July 27, 1916.) [149]

Citation on Appeal of C. S. Reinhart et al.

United States of America, to United States National Bank of Centralia, Corporation, and A. R. Titlow, as Receiver of United States National Bank of Centralia, Greeting:

You are hereby notified that in a certain case in Equity in the United States District Court for the Western District of Washington, Southern Division, wherein Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, a corporation, is complainant, and the United States National Bank of Centralia, a corporation, and A. R. Titlow, as receiver of the United States National Bank of Centralia, are defendants, an appeal has been allowed the Intervenors therein to the United States Circuit Court of Appeals, Ninth Circuit. You are hereby cited and admonished to be and appear in said court at the City of San Francisco, State of California, 30 days after the date of this citation and show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable Edward E. Cushman,
Judge of the United States District Court of the

Western District of Washington, Southern Division,
this 27th day of July, 1916.

EDWARD E. CUSHMAN,
United States District Judge.

Receipt of a true copy of the foregoing citation is
hereby admitted this 31st day of July, 1916.

R. P. OLDHAM,
R. C. GOODALE,
Solicitors for Defendant.

Service of the foregoing Citation, and also the
petition for appeal and assignments of error herein
admitted this 27th day of July, 1916, and issuance
of citation to complainant waived.

TROY & STURDEVANT,
Attys. for Complainant.

(Filed Aug. 7, 1916.) [150]

Bond on Appeal of C. S. Reinhart et al.

KNOW ALL MEN BY THESE PRESENTS:
That we, C. S. Reinhart and C. Will Shaffer, as prin-
cipals, and Fidelity and Deposit Company of Mary-
land, as sureties, acknowledge ourselves to be
jointly indebted to United States National Bank of
Centralia, and A. R. Titlow, as receiver of said
United States National Bank of Centralia, appellee
in the above cause, in the sum of \$500, conditioned
that, Whereas, on the 31 day of January, A. D. 1916,
in the District Court of the United States for the
Western District of Washington, Southern Division,
in a suit pending in that court, wherein Frank P.
McKinney, as receiver of the Olympia Bank & Trust
Company was complainant, and A. R. Titlow, as re-

ceiver of the United States National Bank of Centralia, a corporation, substituted for C. A. Snowden, was defendant, and C. S. Reinhart and C. Will Shaffer, as stockholders of the Olympia Bank & Trust Company, for themselves and all other stockholders of said corporation, were intervenors, numbered on the Equity Docket as 32-E, a decree was rendered against the said intervenors, and the said intervenors having obtained an appeal to the United States Circuit Court [151] of Appeals for the Ninth Circuit, and filed a copy thereof in the office of the clerk of the court to reverse the said decree, and a citation directed to the said United States National Bank, of Centralia, and A. R. Titlow as receiver of the United States National Bank of Centralia, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, in the State of California, on the — day of —, A. D. 1916, next.

Now, if the said C. S. Reinhart and C. Will Shaffer, *as shall* prosecute their appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

C. S. REINHART,

C. WILL SHAFFER,

Principals.

[Seal] FIDELITY AND DEPOSIT COMPANY
OF MARYLAND.

By H. T. HANSEN,

Attorney-in-Fact.

Approved this 3d day of August, 1916.

EDWARD E. CUSHMAN,

United States District Judge.

(Filed Aug. 3, 1915.) [152]

Affidavit of Service of Citation, etc.

On this 4th day of August, 1916, personally appeared before the undersigned authority Nora W. Gardner, who being first duly sworn says: That she delivered a copy of the within citation to R. P. Oldham and R. C. Goodale, the solicitors for the defendant, on the 31st day of July, 1916.

NORA W. GARDNER.

Subscribed and sworn to before me this 4th day of August, 1916.

[Seal]

R. G. SHARPE,

Notary Public in and for the State of Washington,
Residing at Seattle.

(Filed Aug. 7, 1916.) [153]

**Intervenor's Exhibit No. 1—Order of Superior Court
in State of Washington vs. Olympia Bank &
Trust Co. Granting Permission to File Bill of
Complaint in Intervention.**

*In the Superior Court of the State of Washington in
and for the County of Thurston.*

No. 5628.

STATE OF WASHINGTON, on the Relation of
W. V. TANNER, as Attorney-General,
Plaintiff,

vs.

THE OLYMPIA BANK & TRUST COMPANY, a
Corporation,

Defendant.

This cause coming on to be heard on the motion of C. S. Reinhart and C. Will Shaffer for permission to intervene in that certain action heretofore brought in the District Court of the United States for the Western District of Washington, Southern Division, wherein Frank P. McKinney, as Receiver of the Olympia Bank & Trust Company, is complainant, and A. R. Titlow, as receiver of the United States National Bank of Centralia, is defendant, the relief sought by C. S. Reinhart and C. Will Shaffer being fully set out in the complaint, a copy of which is attached to said motion and said motion being based on said complaint and the records and files herein, it is hereby

ORDERED that said C. S. Reinhart and C. Will Shaffer be and they hereby are given permission to file said bill of complaint in intervention.

Done in open court this 15th day of May, 1915.

JOHN R. MITCHELL,

Judge.

State of Washington,

County of Thurston,—ss.

I, A. C. Baker, Dep. County Clerk of Thurston County and ex-officio clerk of the Superior Court of the State of Washington, for Thurston County, holding sessions at Olympia, do hereby certify that the foregoing is a true and correct copy of the original Order Cause No. 5628 [154] as the same appears on file and of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 13th day of December, 1915.

[Seal]

A. C. BAKER,

Dep. County Clerk and Clerk of the Superior Court
of Thurston County, State of Washington.

(Doc. Int. Rev. Stamp Canceled.)

(Filed Dec. 15, 1915.) [155]

**Intervenor's Exhibit No. 2—Letter, August 27, 1914,
Peterson to Olympia Bank & Trust Co.**

THE DEXTER HORTON NATIONAL BANK,
of Seattle.

Capital, \$1,200,000. Surplus, \$240,000.

N. H. Latimer, President.

R. H. Denny, Vice-President.

W. H. Parsons, Vice-President.

M. W. Peterson, Cashier.

L. H. Merritt, C. E. Burnside, J. C. Norman,
Assistant Cashiers.

R. H. MacMichael, Bond Manager.

Seattle, Washington, August 27, 1914.

Olympia Bank & Trust Co.,
Olympia, Wash.

Gentlemen:—

The United States National Bank of Centralia,
Washington, have sent to us their draft for \$1,000.00
with instructions to place same to your credit.

Kindly advise us if it is your wish that we should
credit your account on our books with this sum or
make some other disposition of it.

Yours truly,

C. M. W. PETERSON,
Cashier.

Checked. F. P. M.

(Filed Dec. 15, 1915.) [156]

**Intervenor's Exhibit No. 3—Affidavit of J. W.
Daubney.**

Subject: Organization of Bank.

Centralia, Wash., Aug. 19, 1914.

Mr. J. L. Mahundro,
State Examiner,
Olympia, Wash.

State of Washington,
County of Thurston,—ss.

I, J. W. Daubney, being first duly sworn, on oath depose and say that the Olympia Bank & Trust Co. Bank has on deposit with the United States National Centralia, Wash., Bank \$50000.00/100 subject to the order of the said Olympia Bank and Trust Co. Bank; that said money is deposited preliminary to the organization of the aforesaid bank; that said deposit is unconditional and is subject to check only in the usual course of banking business.

J. W. DAUBNEY,
Cashier.

Subscribed and sworn to before me this 19th day
of August, 1914.

[Seal]

J. H. BROWN,
Notary Public.

States' Indent. 6.

State's Ex. 6.

(Filed Dec. 15, 1916.) [157]

**Intervenor's Exhibit No. 4—Draft Dated Centralia,
Wash., 9/15/14.**

Centralia, Wash., 9/15, 1914, No. —.

On Demand — pay to the order of

U. S.

National THE UNITED STATES NATIONAL
Bank. BANK 98-43,

Of Centralia, Washington.

Twelve thousand five hundred# Dollars \$12500.00

Value received and charge the same to account of
OLYMPIA BANK & TRUST CO.

By W. DEAN HAYS,

Cashier.

To United States N/ Bank,
Centralia, Wash.

To cover charge of 8/31-1914.

State's Ex. 12.

(Filed Dec. 15, 1915.) [158]

**Intervenor's Exhibit No. 5—Customer's Draft Dated
Olympia, Wash., Sept. 14, 1914.**

CUSTOMER'S DRAFT.

OLYMPIA BAN & TRUST COMPANY 98-51.

Olympia, Wash., Sept. 14, 1914. \$1000.00

PAY TO THE ORDER OF OLYMPIA BANK
AND TRUST COMPANY One thousand dollars,
DOLLARS, with exchange.

Value Received and charge the same to account of
OLYMPIA BANK & TRUST CO.

W. T. CAVANAUGH,

Asst. Cashier.

To U. S. National Bank,
98-43 Centralia, Wash.

(Stamped): The United States National Bank,
Centralia, Wash., Paid Sep. 17, 1914.

(Endorsed):

Pay to the Order of
Any Bank, Banker or Trust Co.

SEP. 17, 1914.

FARMERS & MERCHANTS BANK

98-46 of Centralia. 98-46

C. PAUL UHLMANN, Cashier.

Pay to the Order of
ANY BANK, BANKER OR TRUST CO.

All prior endorsement guaranteed.

SEP. 15, 1914.

FIRST NATIONAL BANK.

24-4 Portland, Oregon. 24-4

A. Wyld, Cashier.

PAY ANY BANK OR BANKER.

Previous endorsements guaranteed.

SEP. 16, 1914.

THE NATIONAL BANK OF COMMERCE.

19-3 of Seattle, Wash. 19-3.

Mail.

Mail.

PAY TO THE ORDER OF
ANY BANK, BANKER OR TRUST CO.

All prior endorsements guaranteed.

OLYMPIA BANK & TRUST CO.

Olympia, Washington. [159]

**Intervenor's Exhibit No. 6—Customer's Draft Dated
Olympia, Wash., Sept. 3, 1914.**

CUSTOMER'S DRAFT.

OLYMPIA BANK & TRUST COMPANY 98-51.

Olympia, Wash., Sept. 3d, 1914. \$1000.00.

**PAY TO THE ORDER OF PUGET SOUND
STATE BANK, One thousand dollars DOLLARS,
with exchange.**

Value Received and charge the same to account of
W. T. CAVANAUGH,
Asst. Cashier.

To United States National Bank, Centralia, Wash.

(Stamped): The United States National Bank,
Centralia, Wash. **PAID SEP. 5, 1914.**

(Endorsed):

**PAY TO THE ORDER OF
THE NATIONAL BANK OF TACOMA.**

34-1 Tacoma, Wash. 34-1.

SEP. 4, 1914.

PUGET SOUND STATE BANK.

34-7 Tacoma, Wash. 34-7

J. W. Burgan, Cashier.

**PAY TO YOURSELVES
or order.**

SEP. 5-1914.

FIELD & LEASE, Bankers.

*** * Lease, Cashier.**

**PAY TO THE ORDER OF
Any Bank, Banker or Trust Co.
Previous endorsements guaranteed.**

Cage Sep. 4, 1914—* *

THE NATIONAL BANK OF TACOMA.

34-1 Tacoma, Wash.

Stephen Appleby, Cashier.

A consolidation of National Bank of Commerce
Pacific National Bank.

PAY TO THE ORDER OF
ANY BANK, BANKER OR TRUST CO.

All prior endorsements guaranteed.

OLYMPIA BANK & TRUST CO.

Olympia, Washington. [160]

Intervenor's Exhibit No. 7.

O. B. & T. Co.

No. 1012.

PAY TO THE ORDER OF
FIRST NATIONAL BANK, SEATTLE \$2000.00
Two Thousand dollars DOLLARS.

Washington.

OLYMPIA BANK & TRUST COMPANY, 98-51.

P

R Olympia, Wash., Sept. 15, 1914.
To Dexter Horton National Bank,
19-4, Seattle, Wash. W. T. CAVANAUGH,
Asst. Cashier.

(Perforated:) PAID 9: 15-14.

(Endorsed:)

RECEIVED PAYMENT
Through Seattle Clearing House.
Sep. 15, 1914.

NO. 2.

FIRST NATIONAL BANK.

* * * [161]

Defendant's Exhibit "A"—Memorandum Check.

MEMORANDUM CHECK.

DEXTER HORTON NATIONAL BANK.

Seattle, Sep. 12, 1914. 191—

PAY 1st. Nat. Bk., Seattle 6000 for Cr. State Bank
of Tenino. (C D), per Phone to J. C. N.

CHARGE—OLYMPIA BANK & TRUST CO.

\$6000.00 Olympia

(Perforated): PAID 9: 12: 14.

(Filed Dec. 15, 1915.) [162]

**Defendant's Exhibit "B"—Letter Dated September
12, 1914, from C. E. Burnside to Olympia Bank
& Trust Co.**

THE DEXTER HORTON NATIONAL BANK.
of Seattle.

Capital, \$1,200,000. Surplus, \$240,000.

N. H. LATIMER, President.

R. H. DENNY, Vice-President,

W. H. PARSONS, Vice-President.

M. W. Peterson, Cashier.

L. H. Merritt, C. E. Burnside, J. C. Norman,
Assistant Cashiers.

R. H. MacMichael, Bond Manager.

Seattle, Washington, September 12, 1914.

Olympia Bank & Trust Co.

Olympia, Wash.

Gentlemen:—

As requested by you over the telephone to-day to
our Mr. Norman, we have charged your account

\$6,000.00, paying like amount to the First National Bank of Seattle for credit of the State Bank of Tenino, Washington, and enclose their receipt herewith.

Yours truly,

C. E. BURNSIDE,

C.

Asst. Cashier.

(Filed Dec. 15, 1915.) [163]

Defendant's Exhibit "C"—Note Dated Olympia, Wash., August 15, 1914, Signed by C. Will Shaffer.

612

\$1100.00

Olympia, Washington, Aug. 15, 1914.

Ninety days after date, without grace, I promise to pay to the order of MYSELF

Eleven Hundred Dollars.

in Gold Coin of the United States of America, of the present standard value, with interest thereon, in like Gold Coin, at the rate of seven per cent per annum from date until paid, for value received. Interest to be paid semi-annually, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this Note. And in case suit or action is instituted to collect this Note or any portion thereof promise and agree to pay, in addition to the costs and disbursements provided by

statute, a reasonable attorney's fees in said suit or action.

C. WILL SHAFFER.

Due 191.

At Olympia, Washington.

No.

(Endorsed:) C. Will Shaffer.

(Filed Dec. 17, 1915.)

(Filed Dec. 21, 1915.) [164]

**Defendant's Exhibit "D"—Letter Dated Tenino,
Wash., July 24, 1913, from W. Dean Hays to
C. S. Gilchrist.**

State

Bank of Tenino,

Wash.

STATE BANK OF TENINO.

Isaac Blumauer, President.

T. F. Mentzer, Vice-President.

W. Dean Hays, Vice-Pres. and Cashier.

A. D. Campbell, Assistant Cashier.

Tenino, Wash. July 24, 1913.

Mr. C. S. Gilchrist, Vice-President,

U. S. National Bank,

Centralia, Wash.,

My dear Charlie:

I have been *useing* every available resource to reduce my note from two to one thousand dollars ever since receiving your letter of the 30th ult., but it seems impossible to do so at the present time. I have hopes of retiring it entirely soon, but it is impossible to do so just now.

What I would like to do is this: Give you my note for \$5,000 collateraled with \$5,100 stock in this bank, you to place \$3,000 thereof as a "special deposit" to the State Bank of Tenino, against which we would not draw, and permit the remaining \$2,000 to retire the present note. This stock is ample security, as I have been offered \$2.10 per share for it; only last week I was offered \$150. I am very anxious to do anything to

(SECOND PAGE)

United States National Bank. (2)
secure you, and if this is satisfactory I will send you down a new note with collateral as outlined.

I am expecting some funds soon; in fact, have been expecting it for some time, but am disappointed, but have the satisfaction that it will only be a question of time until it is forthcoming, when I will [165] take up this obligation.

Hoping this will be satisfactory, I am

Very truly yours,

W. DEAN HAYS.

(Filed Dec. 17, 1915.) [166]

Defendant's Exhibit "E"—Note Dated Olympia, Wash., August 15, 1914, Signed by C. S. Reinhart.

607.

14714.

\$1650. Olympia, Washington, Aug. 15, 1914.

Ninety days after date, without grace, I promise to pay to the order of MYSELF

Sixtenn Hundred and Fifty & 00/100 Dollars in Gold Coin of the United States of America, of

the present standard value, with interest thereon, in like Gold Coin, at the rate of 6 per cent per annum from date until paid, for value received, Interest to be paid semi-annually, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this Note. And in case suit or action is instituted to collect this Note, or any portion thereof, I promise and agree to pay, in addition to the costs and disbursements provided by statute, a reasonable attorney's fees in said suit or action.

C. S. REINHART.

Due 11/13, 1914.

At Olympia, Washington.

No.

(Endorsed:) C. S. Reinhart.

(Filed Dec. 21, 1915.) [167]

Defendant's Exhibit "F"—Note Dated Olympia, Wash., August 17, 1914, Signed by Chas. E. Hewitt.

564.

14711.

\$1100.00 Olympia, Washington, Aug. 17, 1914.

90 days after date, without grace, I promise to pay to the order of MYSELF

Eleven Hundred no /100 Dollars

in Gold Coin of the United States of America, of the present standard value, with interest thereon, in like Gold Coin, at the rate of 6 per cent per annum from date until paid, for value received, Interest to be paid semi-annually, and if not so paid, the whole sum of both principal and interest to become

immediately due and collectible, at the option of the holder of this Note. And in case suit or action is instituted to collect this Note, or any portion thereof, I promise and agree to pay, in addition to the costs and disbursements provided by statute, a reasonable attorney's fees in said suit or action.

CHAS. E. HEWITT.

Due 11/15, 1914.

At Olympia, Washington.

No.

(Endorsed:) Chas. E. Hewitt. [168]

**Bill of Complaint of Roy A. Langley, as Receiver,
etc.**

IN EQUITY—No. 50--E.

ROY A. LANGLEY, as Receiver of the State Bank
of Tenino, a Corporation,

Complainant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and A. R. TITLOW,
as Receiver of United States National Bank
of Centralia,

Defendants.

To the Honorable Judges of the District Court of
the United States for the Western District of
Washington:

Roy A. Langley, as receiver of the State Bank of
Tenino, a corporation, brings this Bill of Complaint
against the United States National Bank of Centralia,
a corporation of Centralia, Washington and A.

R. Titlow, as receiver of the United States National Bank of Centralia.

Your orator complains and says:

I.

That the State Bank of Tenino is and was a corporation organized and existing under and by virtue of the laws of the State of Washington and that prior to the 21st day of September, 1914, was engaged in the banking business with its principal place of business and banking house in the Town of Tenino in Thurston County, in said District; that on said date it closed its doors and ceased doing business as a bank by reason of its insolvency and that thereafter said Roy A. Langley was duly appointed by the Superior Court of the State of Washington, in and for the County of Thurston, receiver of said Bank of Tenino, said [169] Superior Court having jurisdiction in the premises and that thereafter said Langley duly qualified as such receiver and now is and ever since has been the duly appointed, qualified and acting receiver of said State Bank of Tenino.

II.

That heretofore and on the —— day of September, 1915, said plaintiff duly filed in that certain cause pending in said Superior Court of the State of Washington in and for the County of Thurston wherein he was appointed said receiver, a petition to said Court for leave to bring this action which said cause is entitled: State of Washington on the relation of W. V. Tanner, as Attorney General, Plaintiff, vs. State Bank of Tenino, a corporation, defendant," the same being Cause Number 5630 in that

court and that such proceedings were duly had in said cause that thereafter and on the — day of September, 1915, said Court duly made and entered its order granting leave to said plaintiff to bring this action.

III.

That the United States National Bank of Centralia, Washington, prior to the 21st day of September, 1914, was a banking corporation duly organized and existing under and pursuant to the Laws of Congress of the United States of America and was engaged in the business of banking with its principal place of business and banking house in the City of Centralia and County of Lewis in said district and that on said date it closed its doors and ceased doing a banking business by reason of insolvency; that thereafter said A. R. Titlow was duly appointed receiver of the United States National Bank of Centralia by the Comptroller of the Currency and now is and ever since has been said receiver, and that Complainant has duly obtained leave of the District Court of the United States for the Western District of Washington, Southern Division, to bring this suit. [169½]

IV.

That long prior to the 21st day of September, 1914, said State Bank of Tenino and said United States National Bank of Centralia were doing business with each other and had mutual accounts and deposits one with the other and were so doing business up to the time of the closing of their said doors.

V.

That on said 21st day of September, 1914, the books of said State Bank of Tenino showed a balance in favor of said State Bank of Tenino and against said United States National Bank of Centralia in the sum of \$9,571.36 and that shortly after the appointment of this plaintiff, as receiver, as aforesaid, he caused to be filed with the Receiver of said United States National Bank of Centralia a verified claim on behalf of said State Bank of Tenino against said United States National Bank in said sum.

VI.

That since the filing of said claim complainant has made a careful examination of the books and accounts of both banks and that there is now due and owing from said United States National Bank of Centralia to said State Bank of Tenino the sum of \$4,953.08 so far as complainant can determine from the investigation and information that plaintiff has been able to obtain.

VII.

That heretofore dividends have been declared by said Titlow, as receiver, as aforesaid, to the creditors of said United States National Bank of Centralia in the sum of 20% and complainant is informed and believes, and therefore alleges the fact to be that other, further and additional dividends will be declared to the creditors of said United States National Bank of Centralia.

VIII.

That said defendant A. R. Titlow as receiver, as aforesaid, refused and neglected to allow said claim,

or any part [170] thereof, and/or to pay plaintiff said dividends, or any part thereof, though often requested so to do by plaintiff.

WHEREFORE, by reason of the law and the premises complainant prays:

1. For an accounting on behalf of said defendant.
2. That after the amount shall have been determined by such accounting due complainant by defendant, for a judgment allowing complainant's claim in the amount so determined.
3. For an order directing said Titlow, as receiver, as aforesaid, to pay complainant the amount of any and all dividends so declared.
4. For such other and further relief as to the Court shall seem equitable and just.
5. For complainant's costs and disbursements herein.

May it please your Honors to grant unto this complainant a Writ of Subpoena directed to said United States National Bank of Centralia and to A. R. Titlow as Receiver of the United States National Bank of Centralia commanding them at a time and under a certain penalty to appear before this Honorable Court and then and there full, true, direct and perfect answers make, but not under oath (which is hereby expressly waived) to all and singular the premises, and further to stand and perform and abide such further Order, direction and decree herein

as to this Court may seem just.

ROY A. LANGLEY,

Complainant.

FRANK C. OWINGS,

Solicitor for Complainant.

Office and P. O. Address:

Suite 8, Funk-Volland Building, Olympia, Wash-
ington.

(Verified.)

(Filed Dec. 6, 1915.) [171]

Answer.

The defendants, for their answer to the bill of complaint herein say:

I.

Answering paragraph V of said bill of complaint;

Defendants deny any knowledge or information sufficient to form a belief as to whether the books of the State Bank of Tenino showed a balance in favor of the State Bank of Tenino and against the United States National Bank of Centralia in the sum of \$9,571.36, as alleged by plaintiff, or in any other sum.

Defendants admit that plaintiff filed a claim with the defendant receiver, but deny that such claim was filed in the sum alleged, and allege that in fact such claim was filed in the sum of \$9,443.08. [172]

II.

Answering paragraph VI of said bill of complaint,

defendants deny each and every allegation therein contained.

OLDHAM & GOODALE,
Attorneys for Defendants.

(Verified.)

(Filed Dec. 16, 1915.) [173]

Decree.

This cause came on for hearing on the 14th day of December, 1915, and proceeded from day to day with sundry adjournments until the 31st day of December, 1915, and was argued by counsel, and thereupon, upon consideration thereof, it was and is now hereby

ORDERED, ADJUDGED and DECREED as flows, viz.:

1. That the claim of complainant on account of certain drafts of the State Bank of Tenino upon United States National Bank, aggregating the sum of \$2,500, be and the same is hereby denied with prejudice.

2. That the claim of complainant against defendant on account of the certain note of W. Dean Hays, in the sum of \$5,000, heretofore charged to the State Bank of Tenino by the United States National Bank of Centralia, be and the same is hereby denied with prejudice, and said note is held and adjudged to be a good, valid and proper charge on the part of the United States National Bank of Centralia against the State Bank of Tenino and its receiver.

3. That upon accounting had between the parties, [174] complainant be allowed a general claim against defendant as receiver in the sum of \$5511.13, and no more.

4. It is ordered that each party bear its own costs.

Done in open court at the July term of this court, this 3d day of January, 1916, at 10 o'clock in the forenoon.

EDWARD E. CUSHMAN,
U. S. District Judge.

(Filed Jan. 3, 1916.) [175]

Petition for an Order Allowing Appeal of Roy A. Langley, etc.

PETITION FOR APPEAL FILED THE 27TH DAY OF JUNE, 1916, IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION.

To the Honorable EDWARD E. CUSHMAN, District Judge of the Above-entitled Court:

The above-named plaintiff, feeling himself aggrieved by the decree made and entered in this cause on the 3d day of January, 1916, at 10:00 o'clock in the forenoon, does hereby appeal from said decree to the Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors, which is filed herewith and he prays that his appeal be allowed and that citation issue, as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, State of California. [176]

And your petitioner further prays that the proper

order touching the security to be required by him to perfect his appeal be made.

FRANK C. OWINGS,
Solicitor for Complainant.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of five hundred and no/100 dollars.

EDWARD E. CUSHMAN,
United States District Judge.

(Filed June 27, 1916.) [177]

Assignment of Errors of Roy A. Langley, etc.

And now on this the 27th day of June A. D. 1916 came the complainant by his solicitor, Frank C. Owings, and says: That the decree entered in the above cause on the 9th day of January A. D. 1916, is erroneous and unjust to defendant.

First. That the claim of complainant on account of certain drafts of the State Bank of Tenino upon United States National Bank, aggregating \$2,500, was not allowed this plaintiff in said decree.

Second. That the claim of complainant against defendant on account of that certain note of W. Dean Hays, in the sum of \$5,000, was not allowed complainant as a claim against defendants.

Third. That complainant was allowed a general claim against defendant in the sum of \$5,511.13 and no more, on the accounting herein when *complaint* should have been allowed the sum of \$13,011.13.

WHEREFORE, the complainant prays that the said decree [178] be reversed and the District Court directed to enter a judgment as prayed for in

complainant's Bill of Complaint in the full sum of \$13,011.13.

FRANK C. OWINGS,
Solicitor for Complainant.

(Filed June 27, 1916.) [179]

Bond of Appeal of Roy A. Langley.

KNOW ALL MEN BY THESE PRESENTS,
That we, Roy A. Langley, as principal, and American Surety Company of New York, a corporation organized and existing under and by virtue of the laws of New York, as surety, acknowledge ourselves to be jointly indebted to United States National Bank of Centralia, a corporation and A. R. Titlow, as Receiver of the United States National Bank of Centralia, defendants in the above cause, in the sum of \$500, conditioned that, WHEREAS, on the 9th day of January A. D. 1916, in the District Court of the United States for the Western District of Washington, Southern Division, in a suit pending in that court wherein Roy A. Langley, as receiver of the State Bank of Tenino, a corporation, was plaintiff and United States National Bank of Centralia, a corporation, and A. R. Titlow, as Receiver of the United States National Bank of Centralia was defendant, numbered on the Equity Docket as 50-E, a decree was rendered against the said Roy A. Langley, as Receiver of the State Bank of [180] Tenino, a corporation, and the said Roy A. Langley, as receiver of the State Bank of Tenino, a corporation, having obtained an appeal to the United States Circuit Court of Appeals, Ninth Circuit, and filed a copy thereof in the office of the Clerk of the court

to reverse the said decree and a citation directed to the said United States National Bank of Centralia, a corporation, and A. R. Titlow, as receiver of the United States National Bank of Centralia, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco, in the State of California, on the 27th day of August, A. D., 1916 next.

Now, if the said Roy A. Langley, as receiver of the State Bank of Tenino, a corporation, shall prosecute his appeal to effect and answer all costs, if he failed to make his plea good, then the above obligation to be void else to remain in full force and virtue.

[Seal]

R. A. LANGLEY,

As Receiver of the State Bank of Tenino, a Corporation, Principal.

AMERICAN SURETY COMPANY OF
NEW YORK.

By J. H. BROWN,

Its Resident Vice-President.

Attest: THOS. L. O'LEARY,

Its Resident Assistant Secretary.

Approved this 27th day of June, 1916.

EDWARD E. CUSHMAN,

United States District Judge.

(Filed June 27, 1916.) [181]

Citation on Appeal of Roy A. Langley.

United States of America to United States National Bank of Centralia, a Corporation, and A. R. Titlow, as Receiver of the United States National Bank of Centralia, Greeting:

You are hereby notified that in a certain case in equity in the United States District Court for the Western District of Washington, Southern Division, wherein Roy A. Langley, as receiver of the State Bank of Tenino is complainant, and United States National Bank of Centralia, a corporation, and A. R. Titlow, as receiver of United States National Bank of Centralia, are defendants, an appeal has been allowed the complainant therein to the United States Circuit Court of Appeals, Ninth Circuit. You are hereby cited and admonished to be and appear in said court at the City of San Francisco, State of California, 30 days after the date of this citation to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable Edward E. Cushman, Judge of the United States District Court, Western District of Washington, Southern Division, this 27th day of June, A. D., 1916.

EDWARD E. CUSHMAN,
United States District Judge.

Receipt of a copy of the above citation by receipt

of copy is hereby admitted at Seattle, Washington,
this 27th day of June, 1916.

R. P. OLDHAM,

R. C. GOODALE,

Solicitors for Defendants.

(Filed June 28, 1916.) [182]

**Notice of Application for Consolidation of Causes,
etc.**

To the Above-named Defendant, and to His Attorneys R. P. Oldham and R. C. Goodale:

You are hereby notified that the undersigned solicitor for the complainant, will present the application for consolidation, and for enlargement of time, to the Court at the incoming of court on July 27th, 1916.

FRANK C. OWINGS,

Solicitor for Complainant.

Service of the foregoing notice admitted this 22d day of July, 1916, prior to the hearing of the said application and motion.

R. P. OLDHAM,

R. C. GOODALE,

Solicitors for Defendant.

(Filed July 27, 1916.) [183]

Application for Consolidation of Causes, etc.

Comes now the complainant by his solicitor, Frank C. Owings, and applies to the Court for the consolidation of the above-entitled cause with that

certain cause pending in the above-entitled court wherein Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, is complainant, and A. R. Titlow, as receiver of the United States National Bank of Centralia is Defendant, and C. S. Reinhart and C. Will Shaffer, stockholders of the Olympia Bank & Trust Company, for themselves and all other stockholders of said Company were intervenors, the same being cause No. 32, in Equity in the above-entitled court, so that but one transcript and one record may be used on the said appeal, and one set of briefs.

This application is based upon the records and files herein.

FRANK C. OWINGS,
Solicitor for Complainant.

We consent to the foregoing consolidation.

P. M. TROY,
R. F. STURDEVANT,
Solicitors for Complainant Frank P. McKinney in
Cause No. 32.

THOS. O'LEARY,

Solicitors for Intervenor in Cause No. 32.
(Filed July 27, 1916.) [184]

Application.

Comes now the complainant and applies to the Court for an enlargement of the time for filing transcript on appeal in the above-entitled cause, and an extension of the said time to September 20th, 1916.

This application is based upon the records and

files herein and the affidavit of Frank C. Owings, solicitor for the complainant, annexed hereto.

FRANK C. OWINGS,
Solicitor for Complainant.

(Filed July 27, 1916.) [185]

Affidavit of Frank C. Owings.

State of Washington,
County of Thurston,—ss.

Frank C. Owings, being first duly sworn deposes and says: That he is solicitor for the complainant herein; that the stenographer has just completed transcribing the testimony herein; that the same amounted to over six hundred pages, to wit, six hundred twenty-one pages; that the said transcript of testimony has just been delivered to solicitor for complainant herein; that solicitor for complainant has had no opportunity nor time to reduce and condense the testimony herein in compliance with Equity Rule No. 75, and that your solicitor has had no opportunity or time to reduce and prepare the record in compliance with the said rule; that it is necessary that he have until September 20th, 1916, for the purpose of preparing the transcript herein.

Furthermore affiant saith naught.

FRANK C. OWINGS,

Subscribed and sworn to before me this 26th day of July, 1916.

JO ROWE, (Seal)

Notary Public in and for the State of Washington,
Residing at Olympia.

(Filed July 27, 1916.) [186]

Order Consolidating Causes, etc.

This matter coming on to be heard on the application of the complaint for consolidation of the above-entitled cause with Cause No. 32, entitled Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, complainant, vs. A. R. Titlow, as receiver of the United States National Bank, of Centralia, defendant, and C. S. Reinhart and C. Will Shaffer, stockholders of the Olympia Bank & Trust Company, a corporation, for themselves and all other stockholders of said company, intervenors, for the purpose of appeal, so that but one transcript and record may be used on the said appeal, and one set of briefs, and the Court being familiar with the record herein, and the said causes having been consolidated for the purpose of trial, in the above-entitled court, at the time of the trial, and the Court being duly advised, now grants the said application, and it is Ordered that the above-entitled cause be consolidated with the said Cause No. 32 for the purpose of appeal, and that but one transcript and record and one set of briefs may be required and used on the said appeal.

Dated July 27th, 1916.

EDWARD E. CUSHMAN,
District Judge.

(Filed July 27, 1916.) [187]

Order Extending Time to File Record to September 20, 1916.

This matter coming on to be heard on the application to enlarge the time to file the transcript herein, and it appearing to the Court that there is good cause for enlargement of time, the Court now hereby extends and enlarges the time to file the transcript herein to and including September 20th, 1916.

Dated July 27th, 1916.

EDWARD E. CUSHMAN,
District Judge.

(Filed July 27, 1916.) [188]

Plaintiff's Exhibit No. 1

In Account with State Bank of Tenino.

RECONCILEMENT OF ACCOUNT From Jan. 1, 1914 to Sept. 19, 1914.

Date.	Items.	Amount.	Date.	Items.	Amount.	No.	Amount.	No.	Amount.
	Your Balance to our Credit Our Balance, to your credit,	√3,580.21		Our Balance, to your Debit,					
	We Debit (not in your account)			Your balance to our Debit,	9,571.36				
Jan. 23	Ent. for Coll.	434.60 √		We Credit (not in your account Coll #5088	203.40 √		731.20 √		Bal
	" " "	867.20 √							
	" " "	5.25 √							
Feb. 2	" " "	10.00							
Mch. 5	Dft.	1,000.00 √							
July 15		5,000.							
May 23	Dft.	500.00 √							
	"	500.00 √							
July 31	Exchange	.30							
June 30	Dft.	500.00 √							
July 13	Retd.	10.00							
July 13	"	10.00							
		8837.35							

	You Debit (not on our books),		You credit (not on our books)
Sept. 18	Rem	216.98	July 14 Ck Retd 15.00
19	Ret. We credit	5.00 √	Sept. 14 Wire 6000.00
19	" & Protest We credit	15.70 √	19 Dft. 10.00
19	Rem.	3,036.94	
Sept. 19	You debit Rem	107.58 √	
	Proof,	15,799.76	Drafts afloat,

Proof, 15,799.76

[189]

Plaintiff's Exhibit No. 2.

Number

Tacoma, Washington, April 4, 1914.

12161

On demand after date we jointly and severally promise to pay to the order of Due.....
\$5,000.00

UNITED STATES NATIONAL BANK,
CENTRALIA, WASH.,

Five Thousand no/100Dollars
Payable and Negotiable at the State
Bank of Tenino, Tenino, Washing-
ton

for value received, with interest after date at the rate of per cent per annum until paid, interest payable quarterly Principal and interest payable only in U. S. Gold Coin of the present standard of weight and fineness. For value received, each and every party signing or endorsing this note hereby waives presentment, demand, protest, and notice of non-payment thereof, binds himself thereon as a principal, not as surety, and promises in case suit is instituted to collect the same or any portion thereof, to pay such additional sums

as the court may adjudge reasonable as
attorney fees in such suit

W. DEAN HAYS.

(Filed Dec. 22, 1915.)

(Stamped): PAID

President's Office

Jul 15 1914

United States Nat. Bank

Centralia, Wash.

(Filed Dec. 22, 1915.) [191]

Plaintiff's Exhibit No. 3—Proof of Claim.

THE UNITED STATES NATIONAL BANK.

Centralia, Washington.

PROOF OF CLAIM.

State of Washington,
County of Thurston,—ss.

Personally appeared before me, the undersigned,
a Notary Public in and for said county and State Roy
A. Langley (Receiver of the State Bank of Tenino),
Tenino, Wash., who being sworn on oath says, That
The United States National Bank of Centralia,
Wash., is justly indebted to them in the sum of —
Dollars and ——— cents, upon the following claim, to
wit:

Dollars Cents

Balance due on open account subject to		
check.....	9,571	36
Certificate of Deposit No. — issued by		
the ——— less checks returned.....	128	28

Interest on Certificate of Deposit issued
by ———
Savings Account.
Unpaid draft No. — issued by ———..
Protest Fees on Draft No. — issued
by ———

9,443,08

All of which is due and payable to them alone they having given no endorsements or assignments of the same or any part thereof, and; they further say that they know of no set-off or other legitimate or equitable defence to said claim, or any part thereof.

Name—STATE BANK OF TENINO,
TENINO, WASH.,

By ROY A. LANGLEY,
Its Receiver.

Residence: Olympia, Washington.

Subscribed and sworn to before me this 1 day of
Feb. A. D. 1915.

(Seal) E. S. ENRIGHT,

To be sworn to before a Notary Public.

(Filed Dec. 22, 1915.) [192]

**Plaintiff's Exhibit No. 4—Letter Dated May 15,
1914, State Bank of Tenino to C. S. Gilchrist.**

May 15, 1914.

Mr. C. S. Gilchrist, V. Pres.,

U. S. Nat'l. Bank,

Centralia, Wash.

Dear Sir:—We are herewith returning checks of
Blaumauer Lmbr. Co., contained in your letter of

the 20th ult., it being utterly impossible for us to carry them.

As yet we have not given you credit for the drafts for \$1,000.00 and \$500.00 sent to the Merchants' National Bank in Portland on account of the Blumauer Lmbr. Co., Mr. Blaumauer phoning from Centralia in each case that you instructed us to draw on you for the amounts.

We are carrying this company for all that is possible for us to do at this time, and would like a suggestion from you concerning the same.

H/L Enc.—Reg.

Very truly yours,

STATE BANK OF TENINO,

V. President.

(Filed Dec. 22, 1915.) [193]

**Plaintiff's Exhibit No. 5—Letter Dated Centralia,
Wash., July 15, 1914, From C. S. Gilchrist to
State Bank of Tenino.**

No. 8736.

THE UNITED STATES NATIONAL BANK.

Capital Stock—\$100,000.00.

Chas. Gilchrist, Pres.

C. S. Gilchrist, V. Pres.

Geo. Dysart, V. Pres.

J. W. Daubney, Cashier.

Ross W. Daubney, Asst. Cashier.

H. F. Gilchrist, Asst. Cashier.

Centralia, Wash.

July fifteenth,

Nineteen Fourteen.

State Bank of Tenino,

Tenino, Wash.

Gentlemen:—

We to-day credit your account \$7600.00, being the various notes received in your favor of the 10th, inst. We also charge your account and return herewith note of your Mr. W. Dean Hayes for \$5000.00, and interest \$113.33, making a total charge of \$5113.33.

Enc.

Very truly yours,

CSG/MMH

C. S. GILCHRIST,

Vice-President.

H. [194]

*United States District Court for the Western Dis-
trict of Washington.*

No. 32—E.

FRANK P. McKINNEY, as Receiver, etc.,
vs.

A. R. TITLOW, as Receiver, etc.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please certify and incorporate into the transcript on appeal herein the following:

1. Court's Decision upon Petitions for Rehearing.
2. Affidavit of Service of Petition for Appeal and
Assignment of Errors of Intervenors.
3. Defts. Exhibit G, H, I-A, I-B, and J.
4. Intervenors' Exhibit 8.

R. P. OLDHAM,
R. C. GOODALE,
Solicitors for Deft.

(Filed Sept. 26, 1915.)

NOTICE—Attorneys will please endorse their own Filings. Rule 11. [195]

**Affidavit of Service of Petition and Assignments of
Error of Intervenors.**

State of Washington,
County of King,—ss.

Nora W. Gardner, being first duly sworn, deposes and says: That on July 31st, 1916, she served the petition for appeal and the assignments of errors

herein by the intervenors upon the defendant by delivering to and leaving with the stenographer of Messrs. R. P. Oldham and R. C. Goodale, solicitors for said defendant, purported copies thereof, (received by mail from P. M. Troy, of Olympia, Washington, accompanying a letter dated July 29, 1916, and addressel to A. J. Falknor, Seattle, Washington), at their offices in Seattle, King County, Washington.

Furthermore affiant saith naught.

NORA W. GARDNER.

Subscribed and sworn to before me this 4th day of August, 1916.

[Seal]

R. G. SHARPE,

Notary Public, in and for the State of Washington,
Residing at Seattle.

(Filed Aug. 7, 1916.) [195½]

Decision on Petition for a Rehearing.

Filed Jan. 31, 1916.

TROY & STURDEVANT, THOMAS M.
VANCE, for Complainant.

OLDHAM & GOODALE, for Defendant.

THOMAS L. O'LEARY, THOMAS M.
VANCE, for Intervenors.

CUSHMAN, District Judge.

Complainant and intervenors file separate petitions for a rehearing. The principal ground argued in each is that the Court erred in not allowing complainant's claim for \$35,550, "representing the money loaned Hayes on his notes by the United

States National Bank.” Petitioners contend that this loan preceded the organization of the Olympia Bank & Trust Company, but it is impossible to distinguish the transactions immediately preceding the organization of the bank from those attending it. In such transactions, the Court will look through corporate forms to the substance.

Tanana Trad. Co. v. North America Trad. & Trans. Co., 220 Fed. 783, at 787. [196]

The stock of the Olympia Bank & Trust Company was to be, and was turned over to Gilchrist, executive officer of the United States National Bank, as well as the notes of the stockholders of the Olympia Bank & Trust Company. Hayes’ notes are, and were, recognized as worthless.

There was a fraudulent conspiracy between Gilchrist and Hayes to organize the Olympia Bank & Trust Company, without its stock being paid in cash, as required by law. Each concealed from his associates, the directors of the respective banks in which he was an officer, the nature of the transaction.

In this respect the banks and the receivers are on a par. There is nothing to be chosen between them. Aside from the question of power, the future establishment and financing of another bank was such an extraordinary transaction as—when so secretly engineered by Gilchrist, to constitute a fraud upon the United States National Bank and other directors.

The effect of Gilchrist’s taking the majority of the stock of the Olympia Bank & Trust Company, as security for the worthless notes of Hayes was—if it stood—to make the United States National Bank the

majority stockholder of the Olympia Bank & Trust Company, a fraud upon the former institution and its stockholders, though a national bank could take such collateral in a *bona fide* transaction.

Hayes deceived his associates, who subscribed for stock in the Olympia Bank & Trust Company, into believing that he, Hayes, was loaning them money on their notes, with which their stock was being paid, while he was, in fact, leaving their notes and stock with Gilchrist, of the United States National Bank, with the understanding that, as the notes were paid, the stock would be returned.

The Washington statute regarding the organization of trust companies provides: [197]

“All of which (the capital stock) shall be paid in cash before any trust company shall be authorized to transact any business, and such payment shall be certified to the State Bank Examiner under oath by the president and treasurer or secretary of the trust company.” (Sec. 3346 Rem. & Bal. Code.)

No part of this disputed item was ever paid in cash. What is claimed is that a credit was obtained in the United States National Bank for Hays' note, that is, a promise to pay cash on demand, which promise was, as the Court has found, saddled with an agreement that Hayes would, upon demand, charge off the credit given the Olympia Bank & Trust Company.

The Court found, upon the trial, in effect, that the \$36,550, stock subscribed by Hays was, in no sense, paid, because the credit to the Olympia Bank & Trust

Company, colorably given on account thereof upon the books of the United States National Bank, was secretly and fraudulently pledged, by agreement between Hays and Gilchrist, from the beginning. The fund represented by this colorable credit was, at all times, in the control and keeping of Gilchrist, as an officer of the United States National Bank, and Hays agreed to the charging off of this colorable credit at any time, which agreement he performed upon demand of Gilchrist, by giving drafts to that amount.

If it were established that this was in any sense a genuine, authorized credit, there could be no contention that Hays had any authority to apply it to the payment of his own note, that is, take the money of the Olympia Bank & Trust Company for the payment of his own obligation. But the Court finds that, as a credit, it had no existence in fact, and was only a color of credit.

Upon the petitions for a rehearing, it is urged that the only evidence of such an agreement is a statement by Gilchrist to Dysart to that effect and that, for that reason, it is hearsay. If that was the only evidence, as the Court found Hays and Gilchrist had been in a conspiracy, the statement of one in its furtherance, would be evidence against the other; and, in whatever capacity Hays [198] was acting in his dealing with Gilchrist, when this colorable credit was obtained, it will, as between the innocent banks, be given effect against the Olympia Bank & Trust Company, for it must show the stronger right, which it has not done.

The statement by Gilchrist to Dysart is more than hearsay. This statement, taken in connection with the fact that the draft was immediately thereafter surrendered by Hayes to Gilchrist, without other apparent reason than such an understanding having been entered into between them, together with the other circumstances, including the close secret relations existing between Gilchrist and Hays, makes of the statement more than hearsay.

As Gilchrist was first vice-president and manager of the United States National Bank, counsel, in their petition for a rehearing, demand how it is that Dysart, the second vice-president, could assume to command Gilchrist to obtain from Hays drafts against this colorable credit, or otherwise secure its relinquishment. The only answer to that is that it must have been the righteousness of his cause for "Doubly armed is he who has his quarrel just."

If this credit had been more than colorable, such action upon the part of Dysart would have been reprehensible; but the Court finds that it was not. The giving of the draft was but an effort to remove a cloud created in fraud upon the funds of the United States National Bank.

It is not necessary for the Court to consider whether, in an action at law upon the stock subscriptions of the innocent stockholders of the Olympia Bank & Trust Company, the transactions—whereby they gave Hays their notes with the understanding that he was paying for the stock subscribed by them, would, or would not amount to payment, as the performance of such understanding might be a condition

of the stock subscription and avoid the latter under ground of fraud or mistake. But, when they entrusted to [199] Hays their notes and the securing of the money to pay for their and the other stock and the payment of it, in order to launch the Olympia Bank & Trust Company, and Mr. Hays, in company with Mr. Gilchrist, saw fit to secretly pledge this credit back to the United States National Bank, the stock cannot be held to have been paid thereby, as against the receiver of the United States National Bank.

Doubtless, complainant, representing the innocent stockholders and creditors of the Olympia Bank & Trust Company, would be entitled to prevail against Gilchrist; but the stockholders and creditors of the United States National Bank, represented by its receiver, are equally as innocent as the Olympia Bank & Trust Company. There is no superior equity upon the part of the stockholders of the Olympia Bank & Trust Company over those of the United States National Bank.

Undoubtedly, Hays' associates were upright men and were victimized by him; but when they entrusted him to do their work of seeing to the paying in of the cash on subscriptions for stock—they put him in a position to injure others, as well as themselves. He having resorted to fraud to make a showing of having accomplished the task entrusted to him by his associates, it becomes a question of whether they or other innocent persons should suffer. Equity requires that they, who, by their trust, armed him to commit this fraud, shall suffer.

If it be viewed as a joint fraud of Gilchrist and Hays and that, because the United States National Bank had placed Gilchrist in a position of trust, it is liable to the same extent, yet there is this difference: Complainant and intervenors are seeking to recover from the receiver of the United States National. They must show a superior equity and, at the most, their equity is no more than equal to that of the defendant.

It is, of course, true that a rescission must be promptly made and complete. Considering the fact of the failure and subsequent [200] receivership of the United States National Bank, following immediately upon the discovery of the fraud practiced in this matter, I do not deem the delay in tendering the return of the notes of the stockholders of the Olympia Bank & Trust Company, other than Mr. Hays', until the time of the trial as defeating the right of rescission of the United States National Bank. Both banks were in receiverships. No prejudice could arise. All matters between the receivers were kept in *status quo*.

Regarding the deposits made in the United States National Bank by the Olympia Bank & Trust Company after it began business, and petitioners' and intervenors' claim that the rescission is not complete without the return of the Olympia Bank & Trust Company of such deposits, while it is doubtless true that these deposits with the United States National Bank were greater by reason of the relation between Gilchrist and Hays than they otherwise would have been, the making of them did not inhere in the orig-

inal fraudulent transaction. They are, in fact, affected by it, but they were made afterwards without secrecy and more in the ordinary course.

If the righteous organization of the Olympia Bank & Trust Company was presupposed, there would be nothing wrong or fraudulent about an agreement to make the United States National Bank the former's chief depository. There being no showing of insolvency of the United States National Bank at the time these deposits were made, the essence of any effective fraud in securing these deposits would appear to be wanting, as, whether the Olympia Bank & Trust Company be considered as a duly organized bank, or a fraudulently organized bank, or an association of individuals carrying on a bank *de facto*, they would, most probably, have carried such deposits with the United States National Bank or some other bank.

All transactions after the organization of the Olympia Bank & Trust Company were, doubtless, affected by the fact that it [201] had been organized; but the fact that it was organized fraudulently would not avoid all transactions with which it was concerned.

Hays' notes were returned to him, it is said, when the drafts cancelling the credit in the United States National Bank were given to Gilchrist, and that, if there was a rescission, the notes should have been returned to the Olympia Bank & Trust Company. Hays was the executive officer of the Olympia Bank & Trust Company and the return to him of his notes would be a return to that bank.

It is argued that the effect of this return of the notes was to wipe out Hays' liability on his stock subscription. The only way he could end his liability upon the subscription was to pay in the cash to the newly organized bank, and, when he secured, by means of his notes and stock, this color of a credit with the United States National—which he secretly agreed to cancel upon request—he had not paid his subscription, he had only pretended to do so.

The form of findings and decree was settled herein at the conclusion of the trial. The petition of the intervenors for a rehearing calls attention to the fact that, by the findings, the first and second affirmative defenses set up in the answer of the defendant are not determined. As indicated above, I find that there was no fraud upon the part of any one connected with the Olympia Bank & Trust Company, except Hays, and that the others subscribing for stock in that company, believed that their stock subscriptions had been paid in cash. Counsel for respective parties may submit forms of additional findings to be incorporated, covering this phase of the controversy.

Petitions for a rehearing denied. [202]

*In the Superior Court of the State of Washington
for Thurston County.*

No. 5628.

STATE OF WASHINGTON, on the Relation of
W. V. TANNER, Attorney General,
Plaintiff,

vs.

OLYMPIA BANK AND TRUST COMPANY, a
Corporation,
Defendant.

**Defendant's Exhibit "G"—Complaint in Superior
Court in State of Washington etc., v. Olympia
Bank & Trust Co.**

Comes now the plaintiff by and through the relator
here in and alleges:

I.

That during all times herein mentioned he was and
now is the duly elected, qualified and acting attorney
general of the State of Washington.

II.

That during all times herein mentioned the de-
fendant was and now is a corporation duly organized
and existing under and by virtue of the laws of the
State of Washington, with its principal place of busi-
ness at Olympia, Washington.

III.

That during all the times herein mentioned W. E.
Hanson was and now is the duly appointed, qualified
and acting State Bank Examiner for the State of
Washington; that heretofore during the month of

September, 1914, it came to the knowledge of the State Examiner that the above-named bank was in straightened circumstances, and it was apparent that the said defendant would not and could not pay its depositors and meet obligations in the regular course of business, and thereupon the said bank examiner took possession of the said bank, and placed in charge thereof a deputy bank examiner. [203]

IV.

That from reports and examinations received and made by the said state bank examiner, it appeared to the said state bank examiner that the said defendant was and is now insolvent, and after an examination the said bank examiner became satisfied that such bank could not and would not resume business or liquidate its indebtedness to the satisfaction of all its creditors; that the said state bank examiner thereupon reported the facts herein alleged, and reported the fact of the insolvency of said bank to the attorney general of the State of Washington, the relator herein, as provided by law; that said report of said state bank examiner was made in writing, a copy of which is hereto attached, marked exhibit "A," and made a part hereof.

V.

That it is impossible at this time to give a whole and accurate statement of the affairs of said bank in this, that it will be impossible to ascertain the amount of money that may be realized upon the various loans and upon the real estate investments, and upon the furniture and fixtures, and other items showing the resources of said institution.

WHEREFORE, your relator prays that this Court appoint a suitable and proper person as receiver of said bank, and for such other and further relief as may seem proper to the Court in the *premesis*.

W. V. TANNER,
Attorney General.

SCOTT Z. HENDERSON,
Assistant Attorney General,
Attorneys for Plaintiff.

State of Washington,
County of Thurston,—ss.

I, Scott Z. Henderson, being first duly sworn, on oath say: That I am one of the attorneys for the relator in the within and *abobe* [204] *entitle* action; that I am a duly appointed, qualified and acting assistant attorney-general of the State of Washington; that I have read the foregoing complaint, know the contents thereof, and that the matters and things therein alleged are true as I verily believe.

SCOTT Z. HENDERSON.

Subscribed and sworn to before me this 29th day of September, 1914.

JOHN M. WILSON,
Notary Public in and for the State of Washington,
Residing at Olympia.

**Exhibit "A" to Complaint—Letter Dated Olympia,
September 21, 1914, From W. E. Hanson to
Hon. W. V. Tanner.**

STATE OF WASHINGTON.

OFFICE OF STATE EXAMINER.

Olympia, September 21st, 1914.

Hon. W. V. Tanner,
Attorney General,
Olympia, Washington.

Dear Sir:

As State Examiner, I have taken charge of the Olympia Bank & Trust Company, situated at Olympia, Thurston County, Washington, and from reports and examinations have become satisfied that said bank cannot resume business or liquidate its indebtedness to the satisfaction of the creditors, and that the said bank is insolvent.

These facts are reported to you, with the *request*, that you take proper steps to have a receiver appointed, as provided in the statutes.

Yours very truly,

W. E. HANSON,
State Examiner. [205]

*In the Superior Court of the State of Washington
for Thurston County.*

No. 5628.

STATE OF WASHINGTON, on the Relation of
W. V. TANNER, Attorney General,
Plaintiff,

vs.

OLYMPIA BANK AND TRUST COMPANY, a
Corporation,
Defendant.

Order Appointing Receiver.

On this 29th day of September, 1914, this cause coming regularly on for hearing in open court, the above-named relator appearing by Scott Z. Henderson, assistant attorney-general, and the above-named defendant appearing by ————, and the Court being fully advised in the *premesis*, and it appearing to the Court that Frank McKinney is a suitable and proper person to be appointed receiver for the said defendant,

IT IS THEREFORE HEREBY ORDERED that the said Frank McKinney be and hereby is authorized to take possession of the said defendant and its property, upon qualifying as provided by law, and upon making, executing and delivering a bond in the sum of \$200,000, the said bond to be given to the State of Washington for the use and benefit of the defendant, its depositors, guarantors, and stockholders, conditioned that he will faithfully discharge the duties of receiver to said defendant, and

will faithfully preserve and account for the assets of said bank, according to law and the orders of this Court, and

IT IS FURTHER ORDERED that this receiver make due report to this Court of the proceedings herein as provided by law.

W. O. CHAPMAN,
Judge. [206]

State of Washington,
County of Thurston,—ss.

I, I. N. Holmes, County Clerk of Thurston County, and ex-officio Clerk of the Superior Court of the State of Washington, for Thurston County, holding sessions at Olympia, do hereby certify that the foregoing is a true and correct copy of the original complaint, and order appointing receiver, in cause No. 5628, as the same appears on file and of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 23d day of December, 1915.

[Seal]

I. N. HOLMES,

County Clerk and Clerk of the Superior Court of
Thurston County, State of Washington.

(Doc. Int. Rev. stamp. Cancelled.) [207]

**Defendants' Exhibit "H"—Letter Dated Olympia,
Wash., August 25, 1914, From W. Dean Hays
to U. S. National Bank.**

H. T. Jones, Chairman of the Board.

C. S. Reinhart, President.

W. Dean Hays, Cashier.

W. T. Cavanaugh, Assistant Cashier.

I. M. Howell, Vice-President.

C. Will Shaffer, Secretary.

**OLYMPIA BANK & TRUST COMPANY,
Olympia, Washington.**

August 25, 1914.

U. S. National Bank,
Centralia, Wash.

Gentlemen:

Please charge our account with one thousand
(\$1,000.00) dollars and transfer that amount to the
Dexter-Horton National Bank, Seattle, Washington,
for our credit and advice, and oblige,

Yours very truly,

W. DEAN HAYS,

Cashier.

WDH/C.

(Stamped:)

(U. S. National Bank.

Aug. 26, 1914.

Centralia, Wash.) [208]

Defendants' Exhibit "I-A"—Letter Dated Centralia, Wash., September 24, 1913, From W. Dean Hays to U. S. National Bank.

Centralia, Wash., Sept. 24, 1913. 190

To The United States National Bank:

I acknowledge receipt of ——— cancelled vouchers accompanying statement close of business July 25, 1913, and showing a credit balance of \$2649.92, which I have examined and found correct.

STATE BANK OF TENINO.

W. DEAN HAYS,

V. P. [209]

Defendant's Exhibit "I-B"—Statement of Account.
STATEMENT OF ACCOUNT.

Centralia, Washington, July 25, 1913.

State Bank of Tenino,
 Tenino, Washington.

In Account With
UNITED STATES NATIONAL BANK.

Please examine and report.

DR. 1913				CR	
June 26	Coll.	2057.33	June 25	Balance	3384.68
26	R.	40.37	26	R.	181.71
27	.....	81.71	27	.....	21.36
28	Coin	2000.00	28	.....	336.94
30	.....	217.10	30	.....	152.40
July 1	Coin	3000.00	30	.....	802.54
1	Coin	55.90	July 1	.....	929.93
2	.....	97.94	2	.....	1672.33
2	Coin	3000.00	2	Int.	3.58
3	Coin	2600.00	3	.....	4878.24
3	.....	42.50	7	.....	1207.35
7	Ret.	3.00	7	.....	821.97
7	Coin	2720.00	8	(3)	6077.46
7	.....	780.46	9	.....	170.36
8	Ret.	10.00	9	Ret.	19.00
8	.....	462.60	10	.....	493.47
9	.....	236.83	11	.....	1371.04
10	.....	258.60	12	.....	196.03
11	.....	302.28	14	.....	459.00
12	.....	111.90	15	.....	1192.97
14	.....	251.65	16	.....	419.20
15	.....	122.77	17	.....	582.58
15	Coin	2000.00	18	.....	457.82
16	.....	594.78	19	.....	378.54
17	.....	433.26	21	.....	517.69
18	Coin	2000.00	22	.....	312.58
18	.....	69.25	23	.....	241.04
19	.....	804.33	24	.....	904.48
21	.....	48.25	25	.....	388.08
22	.....	365.80			
23	.....	425.07			28574.19
24	.....	426.52			
25	.....	304.07			
	Balance	2649.92			

28574.19

July 25 Balance 2649.92

Defendant's Exhibit "J."

STATE
BANK OF TENINO,
WASH.

No. 4704.

CAMPBELL & CAMPBELL,
The Merchants.

Tenino, Wash., Sept. 19, 1914.

Pay to the Order of THE UNITED STATES
NATIONAL BANK \$2000.00 Two Thousand
no/100.....Dollars.

CAMPBELL & CAMPBELL,
A. C. CAMPBELL.

State Bank of Tenino,
Tenino, Wash.

(Endorsed across face):

"Certified
State Bank of Tenino
Isaac Blumauer, Pt."
"Pay to the order of

ANY BANK OR BANKER

Previous Endorsement Guaranteed

UNITED STATES NATIONAL BANK

98-43 Centralia, Wash. 98-43

J. W. DAUBNEY, Cashier."

Intervenors' Exhibit No. 8.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	1 2 3 4 5 6 7 8	Aug. 24 U. S. Natl. Bank Centralia, Wash. On.	Amount.
8	22	—	Sam Gibson	Same	1	You	50
11	21	Chas. Luman	Secy. State of Wash.	Secy. of State	2	N. T. & O. D. Co.	2
"	"	R. T. Noyes	Secy. State of Wash.	" "	3	Peoples Svgs. Bk.	17 50
"	"	A. E. Hodgson	Secy. State of Wash.	" "	4	The Mercantile Bk.	17 50
"	17	O. & W. Orchard Co.	Secy. State of Wash.	Same	5	Coffman & Dobson Co.	20
"	22	Albers & Son.	E. O. Albers	"	6	State Bk. Shelton	34 38
Jun. 15	4810	Pt. Blakely Mill Co.	Matt Elenious	"	7	Bk. of California	17
Aug. 21	3	S. M. Dowell, Supt.	H. Hughitt	Secy. of State	8	North Pacific Bk.	2
"	20	A. B. Kennedy	I. M. Howell				
							\$160.38

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Aug. 25
U. S. Natl. Bank
Centralia, Wash.

V

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
1914						
8	25	C. Smith	R. Lathrop	Taylor & Clark.	U. S. Natl. B. Cntrl. Wash.	15
"	21	John B. Fogarty	Secy. of State	Same	1st N. B. Everett	40
"	18	Detroit Auto Scale Co.	"	"	Peoples S. B. Detroit, Mich.	10
"	20	J. Hill	"	"	1st N. B. Sedro Wooley	2
"	21	Roy L. Shotwell	I. M. Howell	"	State B. Tenino	2
"	20	Wilkeson Co.	Secy. of State	"	Sea. Amer. B. Tacoma	2
"	22	U. S. M. Laughlin, Mngr.	"	"	Montesano St. Bank	17 50
"	22	J. L. Nixon	"	"	B. of Farmington, Wash.	2
"	22	Lawrence Perry	"	"	1st N. B. Kelso, Wn.	2
"	21	G. W. Shannon Co.	"	"	Citizens B. Anacortes	2 45
"	22	George Livesey	"	"	Bellingham N. B.	40
"	20	C. C. Wilcox	I. M. Howell	I. M. Howell	U. S. N. B. Vancouver, Wn.	2
"	22	W. W. Sparks	Secy. of State	"	W. Ex. B.	2
"	22	Grays Harbor Comm. Co.	"	"	Hayes, Hayes, Aberdeen	17 50
"	22	"	"	"	"	17 50
"	24	C. R. Janers	"	"	"	2
"	22	John J. Rudkin	"	"	Yakima Valley B. N. Y. Wash.	17 50
"	22	Yakima Implement Co.	"	"	Yakima T. Co.	2
"	21	M. D. Baker Motor Cor. Co.	I. M. Howell	"	1st N. B.	2
"	22	N. P. Irrigation Co.	Secy. of State	"	Yak. Valley B.	52 50
"	21	Jones Bros.	I. M. Howell	"	State B. Wilbur	6
				22	Total	\$255 95

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Aug. 24
U. S. Natl. Bank
Centralia, Wash.

V

1914	Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Aug.	25	550	Ruth S. McDonald	Oeg. B. & Trust Co.	Same	1 N. W. & S. D. Co., Seattle	5
"	21	8213	The Hub Clothing Co.	Secy. of State	"	2 Seattle Natl. Bk.	17 50
"	22	2830	C. N. Soderstrom	"	"	3 Metropolitan B., Seattle	2
"	21	10	W. L. Bremmerman	"	"	4 N. B. & T. Co. "	2
"	"	"	G. M. Haynes	I. M. Howell	"	5 Old N. B. Spokane	2
"	"	1187	Harry L. Oliver Co.	"	"	6 " " "	2
"	20	9207	W. H. Opie & Co.	Hanover Inv. Co.	I. M. Howell	7 B. of Cal. Tacoma	28 75
"	22	406	J. C. Pauley	I. M. Howell	Same	8 St. Bk. Shelton	2
"	24	3540	Port Blakely Mill Co.	Hiram Roberts	Mrs. R. R. McDonald	9 " " "	21 85
"	15923	Saulisbury S. Bank	R. H. Fry	Same	Same	10 N. E. Natl. B. K. C. Mo.	25
"	25	256	Rajotti Fobert & Winters	Geo. Levy u.	J. B. McMorrin	11 U. S. N. B. Centralia	250
							<hr/> \$358.10

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Date.	No.	Drawn By.	Favor of.	Last Endorser.	U. S. National Bank Centralia, Wash. On.	Aug. 26	Amount.
Aug. 15	24	Moses Coulee Telp. Co.	Secy. of State	Same	1st N. B., Wenatchee	1	15.
" 24	25	" "	" "	"	" " "	2	2 50
" "		H. F. Rice	I. M. Howell	"	" " "	3	2
" "	11768	Halley Mason Hdw. Co.	" " Secy.	"	Bk. Montreal, Spokane	4	8
" "	1110	John Vittuci Co.	Secy. of State	"	Canadian B. Com. Seattle	5	2
" "	6721	Mt. Vernon Cream Co.	" "	"	First N. B. Seattle	6	2
" 25	41473	City of Seattle	" "	"	Treas. City, Seattle	7	4
" 24	227	The Everett Timber & Inv. Co.	" "	"	N. B. Com.	8	6
" "	957	Levinson Hotel Co.	" "	"	Mer. N. B.		17 50
" "	8205	McClure & McClure	" "	"	U. Sav. & T. Co., Seattle	9	17 50
" 26	—	G. G. Crury	" "	"	First N. B. Bremerton	10	40
" 24	221	O. P. Buirud	C. G. Van Hook	"	The National Bk., Tacoma.	11	25
" 22	381	The Waterville Garage	I. M. Howell	"	Douglas Co. B. Waterville	12	2
" "	709	Wash. Paving Co.	" "	"	Wash. Paving Co. Tacoma	13	2
" 26			J. P. Guyer	"		14	3 75
							<hr/>
							\$147 25

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Aug. 28
U. S. National Bank
Centralia, Wash.
On.

Amount.

Last Endorser.

Favor of.

Drawn By.

Date.

No.

Aug. 25	972	Reynolds Motor Co.	I. M. Howell	Same	1	Wash. N. B. Ellensburg	4
" 26	2430	A. Reynolds	" "	"	2	Hayes & Hayes, Abrdn.	2
" "	1142	Donovan Lmb. Co.	" " " Secy. State	"	3	S. W. Wash. B. Ilwaco	17
		Ilwaco Mill. & Lmb. Co.	Secy. of State	"	4	Columbia Val. N. B. Wenatchee	2
		The Gettally Co.	Clerk Sup. Court	"	5	Douglas Co. B. Waterville	25
July 24	173	C. C. Thompson	" "	"	6	1st N. B. Wenatchee	5
Aug. 13	1977	Reeves Crolland & Co.	C. S. Reinhart	"	7	1st N. B. N. Yakima	80
" 13		Wende & Taylor	" "	"	8	The Y. N. B.	2
" 26		Fillman & Co.	Secy. of State	"	9	Traders N. B. Spokane	2
" 6	4684	Henry S. Cohn	Clerk Supreme Ct.	"	10	Sp. & E. T. Co.	2
" 25	114	Roy R. Gin	I. M. Howell	"	11	" " "	10
" 13		N. C. Bardsley	C. S. Reinhart	"	12	Ex. N. B.	2
" 25	48434	Powell Sander Co.	C. I. M. Howell	"	13	" " "	90
" 3	253	Alva S. Sherlock	C. S. Reinhart	"	14	" " "	2
" 27		G. A. Kenyon	I. M. Howell	"	15	Naches St. B.	2
" 25	5991	Sheppard & Dennis Inv. Co.	Secy. of State	"	16	Willapa Har. S. B., Raymond	4
" 26	5308	Chas. Leonard	" " "	"	17	1st N. B. Kent	2
" "		Frank Porter	" " "	"	18	1st. N. B. Mt. Vernon	2
" 25		C. A. Grames	" " "	"	19	Waterville Savgs. B.	2
" 26	249	Jones Brick Garage	" " "	"	20	" " "	2
" 4	267	Sharpstein & Sharpstein	C. S. Reinhart	"	21	Baker & Bays B. Wn.	7
" 6	2208	West Pub. Co.	" " "	"		Bk. Cal. San Fran.	119.90
							216 60

4

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Aug. 28	Amount.
Aug. 26	1295	Burton R. Starr	I. M. Howell, Secy.	Same	Dexter Horton N. B. Seattle, Wash. On.	2
"	13	S. H. Kelleran	of State	"	1 Scan. Amer. B. Seattle	2
"	8	1232 Vandever & Cummings	"	"	2 " " "	5 30
"	7	522 C. H. Stiffen	"	"	3 " " "	8
July 28	635	J. E. Murray	"	"	4 " " "	2
Aug. 5	3439	Geo. D. Emery	"	"	5 Wn. St. B. Seattle	25
"	14	W. A. Keene	"	"	6 Ger. Am. B. "	5
"	3	1053 McBurney & O'Connor	"	"	7 Jap. Com. B. Seattle	3 20
"	3	2275 F. V. Brown	"	"	8 Seattle N. " "	2
June 16	5000	Jay Allen	"	"	9 " " "	2 60
Aug. 6	1049	Preston Throgmson	"	"	10 " " "	5
"	5	1786 Davies Lewis	"	"	11 " " "	5
"	12	2280 F. V. Brown	"	"	12 " " "	1 40
"	26	826 W. P. Patton	"	"	13 " " "	8 60
"	"	10751 Bushman et als.	I. M. Howell	"	14 " " "	17 50
"	5	14007 Hayes McM. & D.	"	"	15 " " "	14 55
"	10	" "	C. S. Reinhart	"	16 First N. B. "	1 20
"	15	Kent Newland	"	"	17 " " "	5
"	6	37838 N. B. C. Seattle	"	"	18 N. B. C. "	3 20
"	6	972 Josiah Thomas	Clerk Sup. Court	"	19 " " "	25
"	"	7076 Farrel Kane & S.	C. S. Reinhart	"	20 N. W. T. & S. D. Co.	2
			"	"	21 Am. S. B. & G. Co. "	1 50
						145 05

V

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Aug. 27
U. S. National Bank
Centralia, Wash.

1914	Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Aug. 25	"	1373	Sophia C. Nissen	I. M. Howell	Same	1 Seattle N. B.	2
"	"	"	E. H. Fleet	Secy. of State	"	2 Ger. Amer. B. Seattle	40
"	"	4	Tide Land Imp. Co.	"	"	3 The M. Nat. B. "	15
"	"	5	"	"	"	4 " " "	2
" 11	"	79	H. W. Carroll, Treas.	"	"	5 U. S. & Trust Co.	50
July 1	"	78	H. W. Carroll, Treas.	"	"	6 " " "	50
Aug. 24	"	102	The Tac. Travellers Inv. Co.	"	"	7 Pacific N. B. Tacoma	15
"	"	"	Marysville Co. Sp. Asso.	I. M. Howell	"	8 Marysville State Bk.	17
" 25	"	13	Peninsula Motor Co.	"	"	9 1st N. B. Pt. Townsend	50
" 26	"	"	Fulmer & Co.	Secy. of State	"	10 Yakima N. B. N. Yak.	4
" 25	"	8423	Yakima Auto & Sup. Co.	"	"	11 1st N. Bk. N. Yakima	2
" 24	"	347	Reliable Auto. Co.	I. M. Howell	"	12 C. C. Elum St. B.	10
" 22	"	2020	The White Laundry	"	"	13 1st N. B. Hoquiam	2
" 19	"	10207	Canadian B. of Com.	T. R. Pentecost	"	14 Canadian B. Com.	2
							15

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Date.		No.	Drawn By.	Favor of.	Last Endorser.	On.		Amount.
Aug.	5	1852	Wright Kel. & Co.	Clerk Sup. Co.	Same	Dexter Horton N. B.	Seattle, Wash.	2
"	"	277	Creditors Assn.	" "	"	"	"	5
"	4	267	"	" "	"	Am. Sav. B. T. Co.	Seattle	5
"	26	757	O. R. Fox	I. M. Howell	"	"	"	2
"	6	1002	Claud E. Stevenson	Clerk Sup. Ct.	"	The N. City B.	"	1 50
"	25		R. N. Gordon	Secy. State	"	"	"	2
"	5	2356	Dorr & Hadley	C. S. Reinhart	"	Dexter Horton N. B.	"	2 60
"	10		Gt. North Express Co.	"	"	"	"	2
								22 10

V

Date.	No.	Drawn By.	Favor of.	Last Endorser.	4	
					On.	Amount.
Aug. 13		Jno. J. Anderson	C. S. Reinhardt	Same		5
" 26	370	Mr. H. C. Ridgway	Secy. State	"	Puget Sound State Bank.	2
" 27		J. F. Thruettorn	Ben Everett	"	Tacoma, Wash.	2500.
" 12	6002	Hayden Langhorne & M.	Clerk Supm. Ct.	"	The N. B. Tacoma	1 50
" 13		Chas. W. Stewart	"	"	"	1 90
" 14	4349	Bates Peer & Peterson	"	"	"	5
" "	7370	Wm. H. Pitn.	"	"	"	5
" 28	719	W. Paving Co.	John Maki	"	Wash. Paving Co.	3 35
						<hr/> \$2523.75

V

Date.	No.	Drawn By.	Favor of.	Last Endorser.	V	851.42	4
Aug. 26	3819	Theinger Hdw. Co.	I. M. Howell, Secy.	Same			
" 31	155	A. E. Rogen	W. M. Kenzie	"			
" 28	285	E. H. Story	I. M. Howell	"			
" 29	2306	Molburg Lumbr. Co.	Leo. Hammerschmidt.	Geo. Taylor			
							Amount.
							17 50
							2
							2
							35
							<hr/>
							\$56.50
							4
							Amount.
							397
							454.42
							<hr/>
							\$861.42

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[224]

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Aug. 29 Dexter Horton N. B. Seattle, Wash.	4
Aug. 29	179	W. P. White	Self	Same	On.	Amount.
" 26	30426	Hall Bros.	I. M. Howell, Secy. State	"	1 Merch. N. B. Seattle	10
" 27	113	C. Dameyer	Secy. State	"	2 Seattle N. B.	17 50
" 26		Yates Hose Rock Co.	I. M. Howell " State	"	3 N. B. Commerce Seattle	2
" 27	99	I. Am. E. & I. Co.	I. M. Howell, Secy. State	"	4 Dexter Horton N. B.	15
" 27	2472	The Rhodes Co.	I. M. Howell Secy. State	"	5 Oriental Am. B. Seattle	35
				"	6 Natl. City B. Seattle	2
						<hr/> \$81.50

Aug. 31				Puget Sound State Bank		Amount.
				Tacoma, Wash.		
Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	
Aug. 29	7	S. McDowell, Supt.	H. Hughitt	Same	1 The Bk. of Cal. Tacoma	17
" 27	168	W. H. fr. Inman	J. H. Brown	Geo. Miller	2 Fidelity Tr. Co. "	12 50
" 29	13505	Union Lumber Co.	Gust Karas	Same	3 " " "	2 35
" 31	1294	Calvin Stewart	H. F. Jones	"	4 N. B. of "	204 30
" 28		Universal Sup. Co.	I. M. Howell, Scy.	"	5 " " "	2
" 27	339330	P. Tel. & Tel. Co.	E. B. Gausi	"	6 Bk. of Calif. Seattle	6 65
						<hr/> \$244 80

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		Aug. 31		Dexter Horton N. B.		Seattle, Wash.		Amount.	
Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.				
July 29	C1911592	Banker Trust Co.	Louis Sontag	Same	1	Amer. B. Assn.		20.	
Aug. 27	860	Am. Surety Co. N. Y.	J. H. Brown	"	2	N. B. Com. Seattle		1 20	
" "	26	Wm. Martin	Scy. State	"	3	1st N. B.		2	
" 26		W. M. Frost	I. M. H. Scy. of State	"	4	Fidelity W. B. Spokane		2	
" 27		J. E. Davis	" " "	"	5	" "		2	
" 25	1040	King Optical Co.	" " "	"	6	Traders N. B.		17 50	
" 27		R. G. Powers	State Auditor	"	7	Citizens Bk. Bremerton		2	
" 29		A. J. Moore	I. M. Howell	"	8	C. E. Bingham & Co. S. W.		2	
									\$48.70

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Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Sept. 1 Dexter Horton N. B. Seattle, Wash.	Amount.
Aug. 29	6017	Fred. W. Miller	I. M. Howell	Same	1	3rd N. B. Walla Wn.	17 50
"	25	N. S. Foster	"	"	2	Seattle N. B. Seattle	40.
"	29	Beaumont Apple	"	"	3	W. N. B. Ellensburg	12
"	28	Warin St. Bank	"	"	4	Seattle N. B.	2
"	29	Pac. Creosoting Co.	C. A. Kindrum	"	5	W. B. Commerce Seattle	521 70
"	29	C. W. Bonell	I. M. Howell	"	6	"	2
"	"	W. J. Hirtshu	"	"	7	"	2
"	28	Morgan Cigar Co.	"	"	8	Seattle N. B.	2 50
"	29	S. E. Dunner	"	"	9	U. D. & T. B.	2
"	28	First N. B., Seattle	"	"	10	1st N. B.	10
"	29	National City B. Seattle	"	"	11	National City Bk.	40
"	27	Commercial Bank Twisp.	"	"	12	Bk. Calif	5
"	21	P. P. Carroll	C. S. Reinhart, Clk.	"	13	W. W. T. O. D. C.	3
"	21	John W. Roberts	"	"	14	Scan. Am. B.	3 30
"	24	Corwin S. Shank	"	"	15	"	5
"	24	John S. Jurey	"	"	16	N. B. of Com.	5
"	"	Kin Montana	"	"	17	"	2 30
"	25	Grosscup & Lee	"	"	18	Seattle N. B.	2
"	19	F. V. Brown	"	"	19	"	60
"	18	Jay G. Allen	"	"	20	"	2
"	16	Clise & Poe	"	"	21	Dexter H. N. B.	3 50
							\$683.40

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 1	
					On.	Amount.
Aug. 19	1072	Ovid A. Byers	C. S. Reinhardt	Same	Dexter Horton N. B.	
" 17	2512	C. H. Winders	" "	"	Seattle, Wash.	
" 14	5124	Corwin S. Shank	" "	"	On.	
" "	2841	John W. Roberts	" "	"	St. Bank Seattle	5
" 18	2147	B. H. & T.	" "	"	Mchts. N. B. "	2
" 15	7087	Farrell Kane & Stratton	" "	"	Scan. Am. Bk. Seattle	2 70
" 26	1345	Crowin & Grim	" "	"	" " "	7
791481		Note Dominion Canada	" "	"	" " "	4
5110698		" "	" "	"	Am. Svg. B. & T. Co. Seattle	60
			" "	"	Belhg N. B. Bellingham	5
			" "	"	Dominion Canada	1
			" "	"	" "	1
						28.30

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.	4
Aug. 26	545	Ph. Vatile Irrg. Co.	" " "	Same	Comrl. B. Okanogan	17 50	Sept. 1 U. S. N. B. Centralia, Wash.
" 25	16	C. M. Keyes	" " "	"	1st N. B. Zulut	17 50	
" 29	8435	Yak. Auto & S. Co.	" " "	"	1st N. B. N. Yak.	2	
" 28	1450	1st N. B. Wash. triena	" " "	"	1st N. B. Wash. triena	2	
" 26	296069	Ph. Com. N. B.	" " "	"	First N. B. Chicago	20	
" 29	20794	1st N. B. Chewalah	" " "	"	Badu N. B. Chicago	40	
" 28	5547	M. Falls St. & Song Bk.	" " "	"	Spo. & E. Tran. Co. Spo.	15	
" 28	65	A. A. Hampom	" " "	"	Mie N. B. Port. Or.	45	
" 21		H. P. Conncliff	" " "	"	Astoria N. B.	17 50	
" 26		Sidny Zetorsh	" " "	"	Sec. Svgs. & T. Co. Port.	40	
" 27	115765	Wallus N. B.	" " "	"	Bnk. Calif. Portland	17 50	
" 28	722	Davis Muthland	" " "	"	York T. Co. N. Yak.	17 50	
" 28	404	Mrs. Jesmers Kitchen	" " "	"	Spok St. B.	2	
" "	682	F. A. Phillips	" " "	"	N. B. Com.	2	
" "	9037	City Dye Wks.	" " "	"	Scan. Am. B.	35	
" "	16994	E. H. Stantrer Co.	" " "	"	Spo. E. T. Co.	17 50	
" "		H. G. Fitch	" " "	"	Bk. Calif. Tacoma	6 80	
" "		Coffma Dakson & Co.	" " "	"	" "	2	
" 29	91052	Cha. C. Cushin	" " "	"	Bk. of Com. Armporia	2	
" 28	1634	Harry D. Sloan	" " "	"	1st. N. B. Everett	2	
" 29		Comm. Snoechd Co.	" " "	"	Bk. of Com.	17 50	
" 28	2465		" " "	"			
						338 30	

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept 1" U. S. N. B. Centralia, Wn.	Amount.
Aug. 29	3517	Everett Pn., Co.	I. M. Howell Secy. St.	Same	1st N. B. Everett	17 50
" 12	1590	Allstrm Frnily Co.	" "	"	N. B. Comm. Tacoma	15
" "	"	" "	" "	"	" "	2 50
" 14	2700	Bessie Barn	C. S. Rein. hon. Clerk	"	Comcl. Bk. Coneonly	5
" 20	"	C. M. Reeler	" "	"	People S. B. N. W.	3
" 11	3492	Engghut & Riggs	" "	"	Yak. N. B. N. Yak.	1 75
" 21	3973	McAuley & Moya	" "	"	1st N. B. "	5 40
" 17	886	Cordim & Cordim	" "	"	Fidelity N. B. Spo.	2
" "	218	M. M. Stephens	" "	"	Wash. T. C.	60
" 18	413	Aulin Lu & Muther	" "	"	Ex. N. B.	2
" 22	4689	Skusi & Morsun	" "	"	Old N. B.	5
" 26	4700	" "	" "	"	" "	5
" 12	845	M. M. Stephens	" "	"	Fidelity N. B. "	40
" 19	1990	Crosseup & Morrow	" "	"	N. B. of Tacoma	2
" 24	"	J. M. Ponan	" "	"	Second St. B. Chehalis	2
" 27	"	A. R. Titlow	" "	"	N. B. of Tacoma	5
" 10	1485	Davis & Neal	" "	"	Fidelity T. Co. Tacoma	5
" 17	1413	Janis Zypha	" "	"	Bk. of Com. Conprus	1 40
" 26	4514	L. D. Procure Co.	" "	"	1st N. B. Denver, Colo.	10
" 29	407	Mrs. N. P. Guibles	" "	"	Scan. Am. Bk. Tacoma	2 10
" 28	651	N. Tacoma Auto. Bnk Co.	" "	"	North. Pac. B. Tacoma	2
<div> <div>C. E. Hourn</div> <div>I. M. Howell, Secy.</div> <div>State</div> </div>						94.65

Sept. 1			Sept. 2		
Puget Sound State Bank			Puget Sound State Bank		
Tacoma, Wn.			Tacoma; Wn.		
Date.	No.	Drawn By.	Favor of.	Last Endorser.	Amount.
Sept. 1	16109	Olympia Nat. Bk.	Olympia Bank & Trust Co.	Same	201 40
" "	20650	Capitol Nat. Bk.	Olympia Bank & Trust Co.	"	1024 25
[231]					1225 65
Sept. 1			Sept. 2		
Puget Sound State Bank			Puget Sound State Bank		
Tacoma, Wn.			Tacoma; Wn.		
Date.	No.	Drawn By.	Favor of.	Last Endorser.	Amount.
Aug. 31	1079	—Lister	State Treasurer	I. M. Howell	2 00
" 31	156	C. S. Gilchrist	I. M. Howell	Same	2 00
" 31	368	Baker-Boyer Nat. Bk.	I. M. Howell	"	2 00
" 29	17124	First Nat. Bk.	C. N. Hodgdon	"	40
" 31	311	F. F. Smith	I. M. Howell	"	2 00
" 31	14874	First Nat. Bank—Everett	I. M. Howell	"	35 00
" 31	8438	Yak. Auto. & Sup. Co.	I. M. Howell	"	2 00
" 29	537	W. O. Palmer & Co.	I. M. Howell	"	2 00
" 29	158	E. B. Meade Garage	"	"	2 00
" 27	26	Morningside Irrgtn. Co.	"	"	4 00
" 31	4312	Geo. H. Watt	"	"	17 50
" 22	3	M. A. Peacock	"	"	2 00
" 31	8777	Sunnyside Bank	"	"	17 50
" 31	4215	Ephratu St. Bk.	"	"	6 00
Sept. 2		T. D. Rockwell	"	"	2 00
Aug. 31	34273	Hayes & Hayes	E. J. Bernecke	Same	6 00
" 31	3901	Lewis & Levine	I. M. Howell	"	2 50
" 31	928	M. D. Hare	"	"	40 00
Sept. 1	7116	Farrell, Kane & Stratton	J. H. Kane	N. E. Hanson	35 00
Aug. 29		G. Poncen	Olympia Hdq. Co.	Same	25 00
" 29	2282434	Aberdeen Drug Co.	I. M. Howell	"	96 56
[232]					2 00
					343 06

4

Sept. 3
Puget Sound State Bank
Tacoma, Wn.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Aug. 28	11476	Northwestern Merc. Agey.	I. M. Howell	Same	Scandinavian Am. Bk.	15 00
Sept 1	11489	"	"	"	"	2 50
Aug. 31	33	Gladys C. Todd	Independent Pub. Co.	"	Nat. Bank of Tacoma	10 00
Sept 1	819	Montesano State Bk.	Olympia B. & T. Co.	"	"	4 95
" 1		Chas. D. Hurst	I. M. Howell	"	"	2 00
" 1	649	St. Helena Garage	"	"	Bk. of Elma	2 00
Aug. 31	103	J. A. Smith	"	"	Chehalis Nat. Bk.	2 00
Sept 1	15915	J. P. Symons Co.	"	"	Bearden Nat. Bk.	2 00
Aug. 31		J. F. Attwill	"	"	U. S. Nat. Bk. Centralia	2 00
Sept 1		C. O. Mock	"	"	Bk. of Stevenson	2 00
" 3	20659	Cap. Nat. Bank	Olympia B. & T. Co.	"	Baker Boyer Nat. Bk.	2 00
Aug. 31		Montesano Silver Lead Mng. Co.	I. M. Howell	"	Nat. Bk. of Commerce	614 42
" 31	2249	The Emporium Co.	"	"	First Nat. Bk. Portland	17 50
" 31	323	Wm. S. Lewis	"	"	"	35 00
Sept 1	414	B. Schmidt	"	"	Spokane & Eastern T. Co.	40 00
" 1	5048	First Nat. Bk. Kelso	"	"	1st Nat. Bk. Wapato	17 50
" 1	515245	Northern Exp. Co.	"	"	Seattle Nat. Bk.	2 00
Aug. 31	2925	Bank of Commerce	"	"	Northern Exp. Co.	2 00
" 31	299	First Nat. Bk. Pullman	"	"	Bk. of Commerce Everett	10 00
Sept. 1	46976	Spokane & Eastern T. Co.	"	"	First Nat. Bank Pullman	2 00
" 1	46973	Seattle Nat. Bk.	"	"	Spokane & Eastern T. Co.	2 50
					Seattle Nat. Bk.	17 50

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804.87

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Sept. 3
Puget Sound State Bank
Tacoma, Wn.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Aug. 31	2523	Farmers Nat. Bank	I. M. Howell	Same	Dexter Horton	17 50
Sept. 1	932	Republic Rubber Co.	" "	"	Seattle Nat. Bank	15 00
Sept. 1	730	Rainier Valley State Bk.	" "	"	3 Rainier Valley St. Bk.	2 50
" 1	19150	Union S. & T. Co.	" "	"	4 Union S. & T. Co.	40 00
Aug. 31	846	Sherwood & Mansfield	" "	"	5 Citizens S. & T. Co.	40 00
Sept. 1	30156	Japanese American Com. Co.	" "	"	6 Nat. Bk. of Com.	40 00
" 1	1396	E. H. Flick	" "	"	7 German American Bk.	40 00
" 1	31147	Old Nat. Bank	State Treasurer	I. M. Howell	8 Nat. Bk. Commerce	25 00
" 3	102	A. L. Brown Farm	Manuel Niquette	Same	9 Nat. Bk. of Tacoma	15 00
" 1		Swiss Investment Co.	I. M. Howell	"	10 Nat. Bk. of Commerce	17 50
" 1		Mabel S. Tiellar	" "	"	11 Dexter Horton	2 00
" 1	7834	Brace & Hergert Mill Co.	" "	"	12 " "	8 00
" 1		L. Dudley Long	" "	"	13 Peoples Sav. Bk.	2 00
" 2	733	Washington Pav. Co.	L. A. Walter	"	14 Wash. Pav. Co.	45 00
" 3	13	Mrs. H. C. Meade	W. Dean Hays	"	15 Shoshone Nat. Bk.	25 00
" 3		Mrs. W. J. Dugan	" "	"	16 First Nat. Bk. Cody	50 00
" 3	1001	Olympia B. & T. Co.	Puget Sound St. Bk.	"	17 Hanover Nat. Bk.	1000 00
" 3	1009	" "	" "	"	18 Dexter Horton	1000 00
" 3		" "	" "	"	19 U. S. Nat. Bk. Centralia	1000 00
						3384.50

Frank P. McKinney vs.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Sept. 4	8	Harry Dalrymple	C. E. Hewitt	Same	U. S. Nat'l. Bank	4
" "	"	F. A. Dunn	Oly. B. & T. Co.	"	Centralia, Wash.	
Aug. 31	473	Thomas W. Gin	Jas. J. Price	Oly. Hdw. Co.	Inv. & T. Co. Bonlard	5
" "	38248	N. B. Com. Seattle	Us. E. Waldrif,	"	1st N. B. Portland	30
Sept. 4	93	W. H. Bun Co., Treno	City Treas.	"	Fidelity N. B. Spok.	14
					N. B. Com. Seattle	10
					St. Bk. Tenino	317
						68
						<hr/> \$377 18

Date.	No.	Drawn By.	Favor of.	Last Endorser.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	Amount.
Sept. 5	4	Peter Wain	Peter Wain	Same	St. Bk. Tenino	St. Bk. Tenino	Spok. & E. T. Co.	Spok. & E. T. Co.	Fidelity N. B. Spok.	Scan. Am. B.	Ex. N. B.	Spok. T. & B. Co. Spok.	Spok. T. & B. Co. Spok.	Spok. T. & B. Co. Spok.	U. S. N. B. Centralia	Skagit St. Bk. Berley	Bk. of Commerce Everett	Yak. Valley Bk. N. Yak.	C. E. Brigham & Co. S. W.	Mt. Vernon N. B.	Bk. of Stanwood	Bk. Clallam Co. Pt. A.	Bk. " "	Bk. of Elma	1st N. B. Tappuss	
Sept. 5	28	J. B. Taylor	Same	Same																						20
" 4		M. Blum, Mo.	J. Grant Hinkler	"																						5
Aug. 29	288	Saml. Edelstein	Secy. State	"																						15
Sep " 1	1098	Stapler Candy Co.	"	"																						40
" 2	2104	O. M. Lilliequist	"	"																						2 50
" 1	18	Farmers St. B. St. John	I. M. Howell	"																						2
" 2	47019	Spo. & E. T. Co. Spo.	"	"																						40
" 2	47021	"	"	"																						40
" 2	47020	"	"	"																						40
" 3	5092	Blumann Mul. Co.	"	"																						10
" 1	11	Pacific Hy. Garage	"	"																						17 50
" 3	4922	City Grocery	"	"																						2
" 3	211	H. E. Wright	"	"																						2
" 2		Kate Hinchin	"	"																						2
" 2	746	Elkins Bros.	"	"																						2
" 1	143	Ira Goodrich	"	"																						2
" 2	69	Pt. Angeles Motor In.	"	"																						2
" 3	25	E. R. Wauh Sgl. Co.	"	"																						2
" "		Wakefield Bros.	"	"																						2
" 2	904	D. H. Bonsha	"	"																						40

Date.		No.	Drawn By.	Favor of.	Last Endorser.	Sept. 5"	Amount.
Aug.	31	573744	N. Ex. Co.	I. M. Howell	Same	Puget Sound St. Bk. Tacoma, Wash.	17 50
Sep.	"	568376	"	"	"	On.	2
"	2		Hulbert & Weit	"	"	1 Northern Ex. Co.	10
"	2	920	Citizen Bk. Bremtn.	"	"	2 N. W. N. B. Buley	2
"	2	37098	Fidelity Trust Co.	"	"	4 Citizen Bk. Brambia	10
"	2	641	Bk. of Starbuck	"	"	5 Com. Ex. Bk. Chicago	2 50
"	"		Nult Optical Co.	"	"	6 Bk. of Starbuck	10
"	3		O. Halbury	"	"	7 Am. B. & I. C. Seattle	2
"	"	336	C. D. Smith	"	"	8 Sean. Am. B.	2
"	1		Sumt. Lodg. 206 I. O. O. F.	"	"	9 N. B. Com.	35
"	2	1915	Muidin Alun	"	"	10 Rainier St. Bk.	5
"	2	349	D. B. Lushbuy	"	"	11 Seattle N. B.	35
"	2	2839	F. L. Hiedrick & Co.	"	"	12 Fun. N. B.	4
"	1	84	W. M. Setes	"	"	13 Citizen Bk. Georgetown	2
"	3	19694	Palan Market	State Treas.	Secy, State	14 St. Bk. Seattle	2
"	"			I. M. Howell, Secy.	"	15 Dext. H. N. B. Seattle	4
"	1	1313	Firy Co. St. B.	State	"	16 Seattle N. B.	37 50
"	2	6038	Mit. Bank	"	"	17 Mit. Bk.	40
"	2	31168	Old N. B.	"	"	18 N. B. Com.	5
"	"	599	J. P. Mau	"	"	19 Sean. Am. B.	10
"	1	11603	Lincoln Co. St. Bk.	"	"	20 1st. N. B.	2 50
"	2	2890	Harrington St. Bk.	"	"	21 N. B. Com.	2
[237]							\$240

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Date.		No.	Drawn By.	Favor of.	Last Endorser.	Sept. 5" Puget Sound St. Bank Tacoma, Wash.		4
				Secy. of State	Same	On.	Amount.	
Sep. 3	2	1977	Ross Petrie	" "	"	Scan. Am. Bk. Tacoma	2	
"	2		H. G. Fitch	" "	"	Bk. of Cal.	40	
"	2	779	Huffer & Hayden	" "	"	Fidelity T. Co.	10	
"	2	1987	1st. N. B. N. Yakim.	" "	"	N. B.	17	50
"	2	91057	Coffuma Dobson & Co.	" "	"	Bk. of Cal.	4	
"	2	365	Consumer Mfg. & Co.	" "	"	You	2	
"	4	8058	Scan. Am. B. Port.	" "	"	Scan. Am. Bk. Port., Or.	5	
Aug. 28		37646	A. H. Avorin Mch. Co.	" "	"	U. S. N. B.	15	
Sep. 2		37693	" "	" "	"	"	2	50
								98 00

4

Sept. 5
Puget Sound State Bank
Tacoma, Wash.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Sep. 3	820	Muri and Congu	I. M. Howell	Same	Scan. Am. Bk. Tacoma	25
" "	1450	George Livisey	"	"	Balg. N. B. Belling	40
" 2	157	Brown & Thompson	"	"	Ex. N. B. Spok.	5
" 2	9960	Boston Clothing Co.	"	"	1st N. B. Everett	35
" 3	5698	Piper & Taft	"	"	Scan. Am. Bk. Seattle	17 50
" 2	407	John Pattison	C. S. Reinhart	"	Washi. N. B. Spok.	5
" 2	138	Blair & Blair	"	"	Bk. of Com. Seatl.	2
" 2		H. T. Granger	"	"	Scan. Am. Bk. "	2
" 2	1160	June Kinfr	"	"	1st. N. B. "	12
" 1	4968	Geo. B. Cole	"	"	" "	5
" 1	1123	L. E. Kirkpatrick	"	"	Ger. Am. Bk. "	2
Aug. 27	205	Ryan & Desmour	"	"	12 Wash. N. B. Ettenbg.	1 80
" 28	4693	Post Avery & Higgin.	"	"	D. H. N. B. Seattle	5
" "	1774	Paul B. Phillips	"	"	Ex. N. B. Spok.	5
" 26		J. R. Allen	"	"	N. City B. Seattle	5
" 31	1380	Forance & Helsen	"	"	Scan. Am. Bk. Seattle	2
" 29	4889	Geo. H. Hermann	"	"	Merht. N. B. "	10
" "	530	Wm. Wray	"	"	1st N. B. "	15
" 31		J. M. Milk Day	"	"	Seattle E. N. B. "	12
" "	1992	Hormont & Taylor	"	"	Ger. Am. Bk. "	5
			"	"	1st N. B. "	5

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191 55

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 5	
					4	4
Sept. 1					Puget Sound State Bank	
Aug. 29	17125	Govnr Leats	C. S. Reinhart	Same	Tacoma, Wash.	
" 29	634	1st Natl. Bk. Hoquiam	C. W. Hodgdon	C. S. Reinhart	On.	
" 29	2906	Sidney Persin	C. S. Reinhart	"	Fidelity Trust Co. Tac.	
" "	2901	Cannon Furn. Dwan	"	"	N. B. Com.	
July 31	2579	F. A. Kern	Fred S. Guyot	"	London N. B. Portland	
					N. B. Com. Spok.	
					Wash. N. B. Ellensburg	
					Amount.	
					9	
					2	
					25	
					10	
					2	
					3 60	
					\$51 60	

				P. S. Stat. Bk.		4	
				Sept. 8			
				U. S. National Bank			
				Centralia, Wn.			
				On.			
Date.	No.	Drawn By.	Favor of.	Last Endorser.		Amount.	
Spt. 1				Same	1 First Nat. Bk. Cody	25 00	
" 4	5595696	Mrs. W. J. Dugan	W. Dean Hays	"	2 Treas. of U. S.	90 00	
Aug. 7	944	Guy O. Taylor	John Aldridge	"	3 Nat. City Bank	15 00	
" 7	942	" "	I. M. Howell	"	4 " "	30 00	
Sept. 4	3036	Am. Sav. B. & T. Co.	" "	"	5 Am. Sav. B. & T. Co.	40 00	
" 4	34350	Hayes & Hayes Bankers	" "	"	6 Nat. Bk. of Com.	2 00	
" 1	777	Ill.-Central R. R. Co.	Alphonse Bonas	"	7 Nat. City Bk. of N. Y.	57 50	
" 2	5565	Metaline Falls St. & Sav. Bk.	I. M. Howell	"	8 Spokane & Eastern Tr. Co.	2 50	
" 3	47092	Spokane & Eastern Ir. Co.	" "	"	9 " "	2 00	
" 4		Wm. McArthur	Wm. McArthur	Geo. Miller	10 St. Bank of Tenino	5 00	
Aug. 29		C. H. Jones	St. Cap. Record	"	11 Citizens Sav. Bk.	1 50	
Sept. 4	23190	Simpson Logging Co.	Earl McIntosh	Geo. Taylor	12 St. Bk. of Shelton	39 00	
Aug. 31	11370	Olympia Oyster Inv. Co.	Mark Ogle	Wm. Ogle	13 " "	12 25	
" "	11383	" "	Wm. Ogle	Same	14 " "	125 00	
Sept. 5	2737	Nat. Bk. of Tacoma	W. M. Haskell	"	15 Tacoma Exchange	6 50	
July 13	2958	Tacoma L. & Imp. Co.	I. M. Howell	"	16 Fidelity Tr. Co.	45 00	
Sept. 4	2973	" "	" "	"	17 " "	7 50	
" 4	6059	Bankers Trust Co.	" "	"	18 Bankers Trust Co.	40 00	
" 3	91059	Coffman, Dobson & Co.	" "	"	19 Bank of Cal. N. A.	2 00	
Jun 25	9736	Prtng State Bk.	D. W. Chapin	"	20 Prtng State Bk.	25 60	
Sept. 4	1072	Issaquah St. Bank	I. M. Howell	"	21 Issaquah State Bk.	17 50	
						590 85	

Pugot Sound State Bk.

Tacoma, Wn.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Sept. 5	55	H. O. Harting	H. A. Percival	Same	1 Nat. Bk. of Com.	4 55
" 4	5576345	Treas. of U. S.	Sarah M. Williams	Chas. E. Hewitt	2 U. S. Treas.	36 00
" 4	5684546	" "	Levi A. Talbot	"	3 " "	57 00
" 5	103	A. J. Mahillop	W. B. Hawthorne	Same	4 Pug. S. St. Bk.	24 00
" 1		W. H. Morton	"	"	5 " "	32 00
" 4	129	L. S. McKillop	"	"	6 " "	24 00
						177 55

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Sept. 9
Dexter-Horton Nat.
Seattle, Wn.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Sept. 8	14514	Geo. W. H. White	Sec. of State	Same	1 Scand. Am. Bank	110 00
" 3	3129	Northwest Motor Co.	I. M. Howell	"	2 Seattle Nat. Bk.	4 00
" 4	A-374	Ira Bronson	"	"	3 Can. Bk. of Com.	40 00
" 5	172	Allen Edwards	"	"	4 State Bk. of Seattle	240 00
" 1	232	Pae. Window Shade Co.	"	"	5 Dexter Horton	2 00
" 4		A. W. Runhart	"	"	6 Nat. City Bank	5 00
" 4	163	L. L. Owen	"	"	7 Nat. Bk. of Commerce	2 00
" 4	4606	Winton Motor Co.	"	"	8 First National	2 00
" 4	631	Owen McCusper, Jr.,	"	"	9 Nat. City Bank	2 00
" 5	323	Karl Zick Co., Inc.	"	"	10 Union Sav. & T. Co.	52 50
" 7	247	Herrick Fairmount Co.	"	"	11 Nat. City Bank	17 50
Aug. 20	506	Wash. Retail Merchant Assn.	"	"	12 Nat. Bk. of Commerce	2 50
June 30	487	Wash. Retail Merchant Assn.	"	"	13 " "	15 00
						494 50

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Sept. 9
Pugut Sound State Bank
Tacoma, Wn.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Sept. 7	1	Wash. Paving Co.	A. R. Douglas	Same	Fidelity Trust Co.	60 00
" 7	2	" "	R. H. Akers	"	" "	42 00
" 4	11980	Yakima Valley F. G. Assn.	"	"	Yakima Valley Bank	2 00
" 5	552	Magnus G. Thomb	"	"	Bank of Stanwood	16 00
" 2	31169	Old Nat. Bank	"	"	Nat. Bank of Com.	35 00
" 2	21	Farmers State Bk.	"	"	Exchange Nat. Bk.	2 50
" 3	960	Farmers State Bk. of Havre	"	"	Am. Nat. Bk.	10 00
" 4	30548	Marysville State Bk.	"	"	Nat. Bk. of Com.	25 00
" 5	37035	Exchange Nat. Bk.	"	"	Exchange Nat. Bk.	40 00
" 4	13915	First Nat. Bk.	"	"	First Nat. Bk.	40 00
" 5	6010	Farmers Bank	"	"	Seattle Nat. Bk.	40 00
Aug. 28		Alf Soloos	"	"	Scand. Am. Bk.	4 00
Sept. 3	301	Raymond Auto Co.	"	"	Willapa Harbor St. Bk.	2 00
" 5	5630	T. J. Farley	"	"	Bellingham Nat.	2 00
" 5	831	Vancouver Contr. Co.	"	"	U. S. Nat. Vancouver	4 00
" 4		D. Emily F. Balsam	"	"	First Bk. of White Bluff	2 50
" 3	8461	Yak. Auto & Sup. Co.	"	"	First Nat. Bk.	2 00
" 4	1187	Bertles & Bertles	"	"	Traders Nat.	2 00
" 5	114	R. B. Haley	"	"	First Nat. Hoquiam	2 00
" 5	469	Wash. Auto Co.	"	"	Yak. Nat. Bank	2 00
" 5		F. T. McCarty	"	"	Tolt State Bk.	2 00
						337 00

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Sept. 9 Puget Sound State Bk. Tacoma, Wn.	4
Sept 5	83	Geo. B. Simpson	I. M. Howell	Same	1 Wash. Exchange	Amount.	2 00
" 4		W. T. Root	"	"	2 Spokane & Eastern T. Co.		2 00
" 4	2	Frank Funkhouser	"	"	3 Old Nat. Bank		2 00
" 2		Ralph Maguire	"	"	4 E. Bamsmusler Co.		2 00
" 5	126	W. H. Kenworthy & Sons	"	"	5 Nat. Bk. of Tacoma		17 50
" 4	813	Avery R. Hayes	"	"	6 First Nat. White Salmon		15 00
" 3	1444	Am. Trade Mark Assn.	"	"	7 German Am. Nat.		5 00
" 8	246	L. F. Davis	"	"	8 State Bk. of Tenino		5 00
			L. F. Davis				50 50

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Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Sept. 9 Puget Sound State Bk. Tacoma, Wn.	4
Sept. 9	16139	Olympia Nat.	Olympia Bank & Trust	Same	1 Dexter Horton	Amount.	608 14
" 9	18934	Capitol Nat.	Olympia Bank & Trust	"	2 Nat. Bank of Tacoma		1236 07
							1844 21

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Date.	No.	Drawn By.	Favor of.	Last Endorser.	Puget Sound State Bank Tacoma, Wn.	Amount.
Sept. 8		Pac. Lbu. & Millwork Co.	I. M. Howell	Same	1 Puget Sound St. Bk.	40 00
" 1		J. W. Evans	Alex. Youerex	Albert Waddell	2 Nat. Bk. of Tacoma	27 59
" 8	26	Jeannette Benedict	A. Waddell	"	3 " "	5 00
" 8	2331	Big Creek Shgle Co.	I. M. Howell	Same	4 " "	17 50
" 8	13913	St. Bk. of Wilbur	"	"	5 Bk. of California	40 00
" 8	6536	Pac. Nat. Lbr. Co.	"	"	6 " "	17 50
" 8	15832	Scand. Am. Bk.	"	"	7 Scand. Am. Bk.	35 00
" 8	2838	D. & M. Lbr. Co.	"	"	8 Pac. Nat. Bk. Tac.	17 50
" 1	7684	Miller Brosco.	J. A. Piper	Albert Waddell	9 Fidelity Tr. Co.	3 67
" 8	9854	Linstrom-Hanforth Lbr. Co.	L. F. Harmer	"	10 " "	54 30
" 9	737	Wash. Paving Co.	G. W. Young	Same	11 Savage Scofield Blvd.	2 50
" 9	736	"	M. W. Holmes	"	12 " "	2 25
						262 81

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Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Sept. 8	13924	First Nat. Kennewick	I. M. Howell	Same	1 First Nat. Seattle	45 00
Aug. 31	31133	Old Nat. Spokane	C. W. Brown	"	2 Nat. Bk. of Commerce	50.00
Sept. 8	87	Anna Hummel	I. M. Howell	"	3 Nat. City Bk.	2 00
" 7		R. W. Jackson	"	"	4 Union Sav. & Tr.	2 00
" 8	986	R. D. Rinneo	"	"	5 Ger. Am.	2 00
" 8	1693	Lilly & Lilly	"	"	6 Am. Sav. B. & T.	2 00
" 5	9037	Robinson Fisheries Co.	"	"	7 Scand. Am.	52 50
" 8	3922	Lewis & Levine	"	"	8 Am. Sav. B. & T.	17 50
" 8		O. R. Dahl	"	"	9 Bk. of California	40 00
" 8	19200	Union Sav. & Tr. Co.	F. B. Wiesthing	I. M. Howell	10 Union Sav. & Tr. Co.	17 50
" 8	7511	Nat. City Bk.	I. M. Howell	Same	11 Nat. City Bank	40 00
" 8	1523	Citizens B. & T. Co.	"	"	12 "	10 00
" 1	36749	Sears Roebuck & Co.	J. W. Sawyer	Chas. E. Hewitt	13 Dexter Horton	5 12
" 8	20831	First Nat. Chewelah	I. M. Howell	Same	14 Traders Nat. Spokane	2 00
" 7	3008594	Am. Express Co.	"	"	15 Am. Express Co.	2 00
" 5		Marie Gleason	"	"	16 Montesano State	2 00
" 8		F. B. Churchill	"	"	17 St. Bank of Kent	2 00
" 6	507	Fleider Grocery	"	"	18 Citizens Bk. of Bremerton	2 00
" 7	4404	Larson Hdwe Co.	"	"	19 Yakima Nat.	2 00
" 7	596	Ira M. Henkle	"	"	20 Arlington St. Bk.	2 00
Aug. 8		F. J. Walsh	"	"	21 First Nat. Everett	2 50

302 12

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Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 10	4
Sept. 10		Olympia B. & T. Co.	Puget Sound St.		Puget Sound State Bank	
[251]			U. S. Note chgd.		Tacoma, Wn.	
			this Dft. on 9/12/14		On.	Amount.
					1 U. S. Nat. Bank	3000 00

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 11	4
Sept. 10	739	Wash. Pav. Co.	Joe Grimm		Wash. Paving Co.	
" 10	740	" "	J. T. Berrigan		Tacoma, Wn.	
[252]					On.	Amount.
					1 Yourselves	2 10
					2 "	1 25
						<hr/> 3 35

Sept. 11
Puget Sound State Bank
Tacoma, Wn.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Sept. 7	52	Wash. Pav. Co.	Arthur Wright	Same	1 Fidelity Trust	2 75
" 11	650	J. H. Deer	Himself	Same	2 St. Bank of Shelton	10 00
" 9	5668	Dysart & Ellsbury	I. M. Howell	"	3 U. S. Ntl. Centralia	10 00
" 9	1142	Odessa Hdwe & Impl. Co.	"	"	4 Union St. Bk. Odessa	4 00
" 9	225	Toppenish Garage	"	"	5 Central Bk. Toppenish	4 00
" 8	195	Lane Auto Co.	"	"	6 Bank of Elma	2 00
" 5	920	Cassie Grosensbraugh	"	"	7 First Nat. N. Yakima	2 00
" 9	8495	Yakima A. & S. Co.	"	"	8 "	2 00
" 8		F. Bernard Naber	"	"	9 Mansfield State Bk.	2 00
" 9	863	L. H. Livermore	"	"	10 First Ntl. Bk. Sedro-Wooley	2 00
" 9		Clipper Shgle Co.	"	"	11 First Ntl. Bk. Bellingham	27 50
" 8	1158	Chas. A. Fleming	"	"	12 Exchange Ntl. Bk.	100 00
						168 25

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Sept. 12
Puget Sound State Bank
Tacoma, Wn.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Sept. 5	3138	Hague Box & Lbr. Co.	I. M. Howell, Sec. State	Same	1 N. B. of Tacoma	15
" 9	3145	" " "	"	"	2 " " "	2 50
" 10	4564	Union Meat Co.	Andrew Transf. Co.	"	3 " " "	11 20
" 2	402	Bellingham N. B.	Secy. of State	"	4 " " "	17 50
" 10	2348	Chehalis N. B.	"	"	5 Fidelity Tr. Co. Tacoma	4
						\$50 20

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Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 12 Dexter Horton N. B. Seattle, Wash. On.	Amount.
Sept. 10		National Optical Co.	Secy. of State	Same	1 Am. S. B. & T. Co. Seattle	17 50
" "	1034	C. P. Bryant	"	"	2 Seattle N. B.	2
" "	113	Wallace White Crs.	"	"	3 Dexter H. N. B.	15
" "	132	"	"	"	4 "	2 50
" "		A. A. Sherman	"	"	5 Am. Sav. B. & T. Co.	2
" 9	34306	Davenport N. B.	"	"	6 Dexter H. N. B.	205
" 10	30571	Marysville St. Bk.	"	"	7 N B. Commerce Seattle	15
" 10	22253	Wash. N. B. Ellensburg	"	"	8 Seattle N. B.	2
" "	1923	Wm. A. Evans	"	"	9 "	22 50
" 9	1270	Vanllen & Cummings	"	"	10 Scan. Am. Bk. Seattle	35
" 10	967	Hall & Cosyron	"	"	11 Seattle N. B.	40
Aug. 10	64370	Boise City N. B.	N. J. Donart	"	12 Crocker N. B. S. F.	100
Sep. 10		E. N. McLean	Secy. of State	"	13 1st N. B. Wartsburg	2
" 11	269	Logg Bros.	"	"	14 Coaler St. B. Centralia	2
" 7		Dice & Aagin	"	"	15 1st St. Bk. Prescott	2
" 7	914	Geo. L. Hunt	"	"	16 Y. Valley Bk. N. Yak.	2
" 10	933	W. A. Walker	"	"	17 1st. N. B.	2
" 9	343	Edmonds E. L. & P. Co.	"	"	18 St. Bk. of Edmonds	2
" 9	753690	1st. N. B. Butte Mont.	"	"	19 Bk. of N. Y. N. Y.	15
" 10	20136	Pioneer N. B. Retzorin	"	"	20 Hanover N. B.	2
						487 50

4

Sept. 12

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Amount.
Sept. 12	1450	State Treasurer	Olympia Bk. & T. Co.	Same	2500
"	1005	Oly. Bk. & T. Co.	Dexter Horton N. B.	"	3500

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Sept. 14

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Amount.
Sept. 8	1189	J. F. Knight	Emma Buchan	Same	25 00
" 7	62315	Loyal Prof. Ins. Co.	J. D. Cotes	John Aldridge	35 00
" 12	26	F. A. Fresir	Bearer	Baker & Neilsen	3 00
" 5	3430	Ernst Hdwe & Plbg. Co.	M. Dragkhit	Same	29 25
" 8	3229	A. L. Brown	Ed. Castle	"	54 85
" 5	1978	C. Victor Martin	County Sheriff	Fred W. McCorkle	1 60
" 12	2	Kenneth P. Baker	Same	J. H. Wells	15 00
" 10	511	Wenatche Brs. Mens. Assn.	Fred W. McCorkle	Same	1 00
" 5	121	Walter McReyburn	"	"	1 00
" 9	4806	Quincy Valley St. Bk.	I. M. Howell	"	2 00
" 11	2763	Nettleton & Kinney	"	"	17 50
" 7	1279	First Natl. Bank	Us	"	5 00
" 3	34328	Hays & Hays	C. S. Reinhart	"	25 00
" 4	683	D. M. Buffington	F. M. Cook	"	25 00
" 7	2232	Nickel Plate Shoe Co.	C. S. Reinhart	"	25 00
" 9	38420	Natl. Bk. of Commerce	E. R. Johnston	C. S. Reinhart	108 40
Aug. 13	179	Geo. Coryell, Jr.	"	Same	25 00
Sept. 9	14929	First Nat. Everett	"	"	25 00
" 8		Roger M. Bone	"	"	25 00

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498 60

4

Sept. 14
Dexter Horton
Seattle, Wn.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Amount.
Sept. 7			C. S. Reinhart	Same	
" 10	2234	H. N. Martin	"	"	18 00
" 9	147	J. P. Ball	"	"	25 00
" 2		L. N. Long	"	"	25 00
" 1	38291	Edw. R. Taylor	"	"	25 00
" 3		Ntl. Bk. of Com. Seattle	"	"	25 00
" 4	14096	Spokane Cement Bl. Co.	"	"	25 00
"		Hughes, McMicken, Dovell Co.	"	"	15 80
" 4		Us	Ourselves	"	2000 00
[260]					2158 80

4

Sept. 14
First Ntl. Bank
Portland, Ore.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Amount.
Sept. 14		Us	Ourselves	Us	
[261]					1000 00

On.
1 U. S. Ntl. Bank

Chgd. by
Centralia 9/17

4

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Sept. 12	743	Wash. Pvg. Co.	F. Stocks	G. A. Proheny	1 Wash. Paving Co.	9 00
[262]						
Sept. 14						
Puget Sound St. Bk.						
Tacoma, Wn.						
Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Sept. 11	6068	Bankers Trust Co.	I. M. Howell	Same	1 Bankers Trust Co.	40 00
" 11	2816	Ntl. Bank of Tacoma	"	"	2 Natl. Bk. of Tacoma	224 00
" 10	6671	Fir Tree Lbr. Co.	O. Eubanks	Baker & Neilsen	3 " "	80 95
" 10	6658	" "	J. G. Knowles	Same	4 " "	59 30
" 10	6676	" "	H. Lowe	"	5 " "	34 60
" 12	118	A. L. Brown Farm	J. J. McDonald	"	6 " "	10 00
" 11	13626	Union Lbr. Co.	F. Chovaneskey	"	7 Fidelity Trust Co.	21 75
" 11	13571	" "	D. T. Marriot	Baker & Neilsen	8 " "	12 65
" 11	13644	" "	F. A. Cable	F. E. Ward	9 " "	10 95
" 11	13641	" "	F. E. Ward	"	10 " "	38 65
" 11	13574	" "	V. Groboset	Mike Lennon	11 " "	73 65
" 11	13662	" "	O. A. Brown	"	12 " "	14 75
" 11	13628	" "	Dan Olson	"	13 " "	28 90
" 11	13599	" "	D. M. Hume	"	14 " "	38 40
" 11	13595	" "	S. Reith	"	15 " "	45 65
" 11	13624	" "	F. H. Burrows	A. R. Adams	16 " "	41 35
" 11	13655	" "	R. Sutherland	"	17 " "	12 00
" 11	13652	" "	L. H. Houle	"	18 " "	10 55
" 11	13642	" "	Henry Oster	"	19 " "	16 80
" 11	13649	" "	Chas. Peschl	"	20 " "	13 15
" 11	13656	" "	Fred Runyon	Same	21 " "	11 55
						839 20

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 15	
					Dexter Horton N. B. Seattle, Wash.	4
					On.	Amount.
Sep. 12	31275	Oly. N. B. Spok.	I. M. Howell	Same	N. B. of Com.	Seattle 57 50
" 11	14	W. W. C. Miss. Soc.	"	"	N. City Bk.	" 5
" 11	3756	N. B. of Com. Spok.	"	"	Metrop. Bk.	" 15
" 11	3757	"	"	"	"	" 10
" 11	3757	"	"	"	"	" 4
" 11	2278	St. Bk. Wilbur	"	"	N. B. of Com.	" 4
" 11	4926	Ger. Am. Bk.	"	"	Ger. Am. Bk.	" 2
" 12	1132	Whitman Co. N. B.	"	"	Seattle N. B.	" 2
" 14	405	Roger Bonger	"	"	State Bk. Tenino	91 95
" 12	6	J. R. Lunun	Contruder Dist. Co.	"	Citizen St. Bk. Rupy.	2
" 11	3091	Trenson Whitman Co.	I. M. Howell	"	Colfax N. B.	2
" 10	1840	Zurt Brier & Redfield	C. S. Reinhart	"	Spok. Ice T. Co.	4 70
" 12	5697	S. M. Brun	"	"	1st N. B. Burnyh	2
" 14	"	A. M. Cross	"	"	Hayes & Hayes Wn.	2
" 9	53645	Royal T. Ware Co.	I. M. Howell	"	N. B. Com. N. Y.	5
" 12	10202	G. G. Ripey	"	"	Old N. B. Spok.	50
" 10	5741	Burnett Bor	"	"	Hayes & Hayes	40
" 11	7767	Big Bend Ld. Co.	"	"	Paan N. B.	52 50
" 11	2799	C. W. Hollis & Co.	"	"	Lanwut St. Bk. Lmit	17 50
" 10	1140	Newport dip Btrn.	"	"	Security St. Bk.	17 50
" 11	1177	M. H. Lun	"	"	Exchg. Bk. Nuhby.	17 50
" 11	1910	Idaho Fence F. & C. Co.	"	"	Old N. B. Spok.	2
						402 15

4

Date.	No.	Drawn By.	Favor of.	Last Endorser.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	Amount.
Sep.	11	Henry Bour	I. M. Howell	Same	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	"	J. E. Shum	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	11	T. & G. Ranch	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	3	E. L. Prinson	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	3	Peter Meh Work	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	10	Reymeds Motor Co.	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	12	E. S. Clark	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	11	Geo. B. Hortuny	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	"	H. Hanson	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	"	A. S. Cullih	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	15	W. D. Cook	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	11	115597 1st N. B. Los Angeles	Cash	Us	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	11	19223 Lunin. N. B. Port.	Laura S. Hunt	I. M. Howell	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	8	13844 1st Svgs. & B. Co. Doyh.	I. M. Howell	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	"	Or.	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	3	7479 Stanwood Lbr. Co.	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	11	7519 "	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	12	3633 U. S. N. B. Vancouver	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	12	19232 Lin. N. B. Port.	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
"	15	16166 Oly. N. B.	"	"	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
																								267 31

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 10 Puget Sound St. Bk. Tacoma, Wash. On.	Amount.
Sept. 12	214	M. R. Martin	Secy. State	Same	1 P. S. St. Bk.	2
" 10	6665	Fir Tree Lmbr. Co.	John Westey	"	2 N. B. of Tacoma	24 20
[269]						\$26 20

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 16 Dexter Horton N. B. Seattle, Wash. On.	Amount.
Sep. 14	121585	U. S. N. B. Vancouver	I. M. Howell, Secy.	Same	1 Hanover N. B. N. Y.	15
" "	6737	N. B. Comm. Spokane	" "	"	2 N. B. Comm. Spok.	40
" "	322	Tho. R. Walter	" "	"	3 N. W. N. B. Belling.	45
" "	990	Citizen B. & T. Co. Everett	Moon & Pury	I. M. Howell, Secy.	4 Citzn. B. & T. Co. Everett	17 50
" "	242	Toppenish Garage	I. M. Howell, Secy.	"	5 Central Bk. of Toppenish	2
" 12		Wm. Rand	"	"	6 1st N. B. N. Yak.	2
" 10	1691	P. C. Lun. Mfg. Asso.	"	"	7 Metropolitan Bk. Seattle	17 50
" 14	7913	Geo. Olson	"	"	8 Scan. Am. Bk.	40
" "	4660	Chas. Heath	"	"	9 1st N. B.	4
" "	574	Capitol Hill Garage	"	"	10 " "	2
" "	4	J. A. Lundwall	"	"	11 State Bk.	2
" "	15181	1st N. B. Snohomish	"	"	12 Seattle N. B.	2
" 10		A. C. Sullivan	"	"	13 Seattle "	364
" 12	88	Kinnear Paint & Co.	"	"	14 " "	40
" 14	6-100	Gordon McGanagan	"	"	15 Duls. H. N. B.	40
" "	751	Norman B. Absams	"	"	16 " "	2
[270]						635

Sept. 16 4
Washington Paving Co.
Tacoma, Wash.
On. Amount.
30
30

Last Endorser.
Us

Favor of.
C. J. Marnier

Drawn By.
Wash. Paving Co.

No. 15
Date. 9

Olympia Bank and Trust Co. 98-51
Olympia, Wash. Sept. 16, 1914.
Washington Paving Co.
Tacoma, Wash.

We enclose for payment items listed below.
Protest items over
\$10.00 except those
marked X.

Telegraph non-pay-
ment of items exceed-
ing \$300.00.
Respectfully,
Olympia Bank and
Trust Co.

On. Amount.
1 You 30
30

Pd. by
Ok. #4
Credited
Oct. 20 1914

Date.	No.	Drawn By.	Favor of.	Last Endorser.		On.	Sept. 17		Amount.
							Puget Sound St. Bank	Tacoma, Wn.	
Sept. 15	64	E. A. Baker, Jr.	I. M. Howell	Same	1	Fid. Trust Co.			2
" 16	6769	Fir Tree Lbr. Co.	Jno. Lavoy	"	2	Ntl. Bk. of Tac.			14 10
" 15	487	Geo. T. Reid	F. W. McCorkle	"	3	" "			80
" 15	27473	Mutual Lbr. Co.	Antoine Kassis	St. Bank of Tenino	4	U. S. Nat. Centralia			50 62
" 15	27482	"	J. Nicholas	"	5	" "			78 50
" 15	27592	"	Swanson & Swanson	"	6	" "			70 70
" 15	27446	"	T. Vanaman	"	7	" "			54 00
" 15	27597	"	Bert Soule	"	8	" "			33 20
" 15	27540	"	C. O. Moore	"	9	" "			33 25
" 15	27528	"	A. Mattson	"	10	" "			26 75
" 14	27438	"	H. Iverson	"	11	" "			79 90
" 15	27435	"	A. S. Wilhits	"	12	" "			57 57
" 15	27454	"	M. Hallett	"	13	" "			63 07
" 15	27451	"	Milton Mission	"	14	" "			48 52
" 14	27478	"	Tour Anderson	"	15	" "			54 20
" 15	27434	"	T. A. Balch	"	16	" "			86 50
" 15	27371	"	Wm. Greenwood	"	17	" "			45 71
" 15	27509	"	S. Jacobson	"	18	" "			39 25
" 15	27574	"	George Vallis	"	19	" "			53 06
" 14	27420	"	Jno. Herbratut	"	20	" "			88 85
" 15	27533	"	F. E. Hadden	"	21	" "			34 00
									1014 55

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Sept. 17 Puget Sound St. Bk. Tacoma, Wn.	Amount.
Sept. 15	27453	Mutual Lbr. Co.	C. Wallace	St. Bank of Tenino	1 U. S. Nat. Centralia		62 25
15	27539	" "	J. Chambers	" "	2 " " "		42 30
15	27449	" "	J. H. Gallagher	" "	3 " " "		71 95
15	27566	" "	A. Swanson	" "	4 " " "		4 12
15	27615	" "	S. W. Gass	" "	5 " " "		20 00
1	34650	Northwestern Imp. Co.	C. Van Derveer	Same	6 Northwestern Imp. Co.		100 60
							301 22

[273]

4

Sept. 17
Dexter-Horton
Seattle, Wn.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Amount.
Sept. 10	294	Thro. A. Johnson	I. M. Howell	Same	1 Ntl. City Bank	2 00
15	3102	Dairy Mch. Co.	"	"	2 " "	2 00
15	3	Harper Grange	Fred W. Lewis	Chas. E. Hewitt	3 Peoples Sav. Bk.	5 45
14	1496	First S. & T. Bk. Whitman Co.	I. M. Howell	Same	4 Seattle Ntl. Bk.	5 00
14	1851	Robt. Booth	P. M. Troy	Fred McCorkle	5 " "	1 40
15	52398	Scand. Am. Seattle	I. M. Howell	Same	6 Scand. Am.	40 00
June 11	520	J. P. Wall	Fred McCorkle	"	7 " "	80
Sept. 15	8970	St. Bk. of Seattle	I. M. Howell	"	8 St. Bk. of Seattle	40 00
14	661308	First Ntl. Bk. of Butte	"	"	9 Ntl. Bk. of Com.	2 50
15	10925	St. Bk. of Goldendale	"	"	10 " "	19 50
15	948	Citizens Bk. Bremerton	"	"	11 Citizens Bk. Bremerton	2 00
14	2443	Waverly Exch. Bk.	"	"	12 Waverly Exch. Bk.	2 00
10	1907	Emerson Merc. Co.	"	"	13 Pullman St. Bk.	17 50
12	39648	Commerce Tr. Co.	Henry J. O'Brien	I. M. Howell	14 Guaranty Tr. Co.	15 00
9	47197	Spokane & Eastern Tr. Co.	W. E. Cullen	"	15 Spokane & Eastern Tr. Co.	5 00
15	7620	Neuman & Kindall	I. M. Howell	"	16 First Ntl. Bk. Bellingham	25
15	6517	K. & K. Timber Co.	"	"	17 " " Snobomish	17 50
12	2	Cicero Tmbr. & Lbr. Co.	"	"	18 Old Ntl. Bk.	17 50
12	11	Clark Sligh Timber Co.	"	"	19 Grand Rapids S. Bk.	17 50
14		A. M. Wright	"	"	20 Farmers Bank	4 00
15	233	Neuman Kilgrage	"	"	21 Scand. Am. Portland	2 00
						218 90

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Sept. 17	Amount.
Sept. 14	830	Model Steam Ldry.	I. M. Howell	Same	Dexter Horton	4	
14		F. W. Huff	" "	"	Seattle, Wn.		
15		Wakefield Bros.	" "	"	On.		
14	1153	E. E. Langly	" "	"	1 Colfax Natl. Bk.		2 00
17	199	A. J. Fanshier	T. B. Fanshier	"	2 Albion St.		2 00
					3 Bk. of Elma		2 00
					4 First Ntl. Bk. Harrington		2 00
					5 " " Medford, Oren.		30 00
							38 00

[275]

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Sept. 18	Amount.
9 18		Us	Puget Sound State Bk.		Puget Sound State Bank	4	
[276]					Tacoma, Wash.		
					On.		
					1 U. S. N. B. Centralia		4000

Date.	No.	Drawn By.	Favor of.	Last Endorser.	On.	Sept. 18	Amount.
9 18		Us	Dexter Horton N. B.		Dexter Horton N. B.	4	
[277]					Seattle, Wash.		
					On.		
					1 U. S. N. B. Centralia		1000

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 18" Wash. Paving Co. Tacoma, Wash. On.	4
9 17		Wash. Paving Co.	Tony Much	Same	1 You	Amount. 14 35
" 18		" "	Angelo Cerhee	"	2 "	14 50
						<hr/> \$28 85
					S. Olympia Bank and Trust Co. 98-51 Olympia, Wash. Sept. 18, 1914. Wash. Paving Co. Tacoma, Wash.	
					We enclose for credit items listed below. Protest items over \$10.00 except those marked X. Telegraph non-pay- ment of items exceed- ing \$300.00. On.	
					Respectfully, Olympia Bank and Trust Co.	Amount. 14 35
						14 50
						<hr/> \$28 85

Pd. by
Ch. #4
Credited
Oct. 20, 1914.

4

Sept. 18		Amount.
Puget Sound State Bk. Tacoma, Wash.		
On,		
1	Tac. S. B. & T. Co.	41 20
2	N. B. Tacoma	30
3	Fidelity Trust Co. Tac.	2
		\$73 20

Date.	No.	Drawn By.	Favor of.	Last Endorser.
9 15		Chas. Rec. Kabaugh	I. M. Howell	Same
" 16	26782	Yakima N. B.	"	"
" "	14849	The Mabton Bk.	"	"

[279]

4

Sept. 18		
Dexter Horton N. B.		
Seattle, Wash.		
On.		
1	Dexter H. N. B.	
2	Union Svgs. & T. Co. Seatl.	
3	Scan. Am. Bk.	"
4	N. B. Com.	"
5	N. City Bk.	
6	Farm & Mchs. Spok.	
7	Hays & Hays Wn.	
8	Yak. N. B. N. Yak.	
9	1st N. B.	"
0	1st. N. B. Bellhg.	

Date.	No.	Drawn By.	Favor of.	Last Endorser.
9 16		W. J. Bernard Co.	I. M. Howell	Same
" "	339	Pt. Wall	Frank E. Baker	C. E. Hewitt
" "	10289	A. D. Eshleman	I. M. Howell	Same
" 15	31297	Old Natl. Bk. Spok.	"	"
" 16	7588	Natl. City Bk.	"	"
" 15	189	Ch. Russell	"	"
" 16	52528	Anderson & Musetton Dr. Co.	"	"
" 15	507	Wash. Auto Co.	"	"
" "	8547	Yakima Auto & Supply Co.	"	"
" 16	5264	1st. N. B. Bellingham	"	"

[280]

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 18	
					Puget Sound St. Bank Tacoma, Wash. On.	Amount.
9 18		Us	Puget Sd. St. Bk. Tacoma—		1 U. S. N. B. Centralia	\$2000
[281]						
Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 19	
					Dexter Horton, N. B. Seattle, Wash. On.	Amount.
9 19	232	Adam Buler	I. M. Howell	Same	1 Metro Bk. Seattle	40
" 17	411	Smith Foster Wn. Wntn.	" "	"	2 National City Bk. "	40
" 14	567	J. A. Ralmy	" "	"	3 Scan. Am. Bk. "	40
" 8	110098	Woodland Shgl. Co.	" "	"	4 " " "	17 50
" 9	6914	Turyeon & Comrade	" "	"	5 U. Svgs. & G. Co. "	17 50
" 8	8456	McLaughlin-Taylor Co.	" "	"	6 " " "	17 50
" "	314	R. E. & M. L. Sum	" "	"	7 " " "	17 50
" 16	384	Jno. R. Hermann	" "	"	8 Peoples Svgs. "	2
" 17	1706	Geo. A. Nup—	" "	"	9 National City Bk. "	2
[282]						
						194

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 19 Puget Sound St. Bk. Tacoma, Wash. On.	Amount.
9	17	465 McDowl & Co.	Secy. State	Same	1 Puget S. St. Bk.	35
"	"	6852 Cashman St. Bk.	"	"	2 N. B. of Com. Seattle	2
16	37	E. B. Judson & Son	F. M. Lanborn	"	3 Scan. Am. Bk. Tacoma	52 25
16	23556	1st N. B. Everett	I. M. Howell	"	4 N. Bk. Com. Seattle	40
"	1284	Lannot St. Bk.	"	"	5 Lamont St. Bk. Lamont	2
17	7	Parker Dist. F. G. Am.	"	"	6 1st N. B. N. Yak.	17 50
"	196	J. N. Stephens	"	"	7 Ex. N. B. Spok.	2
"	90	Otto Nyberg	"	"	8 1st N. B. Hoquiam	2
17	"	J. E. Prulliam	"	"	9 Fin & Luh Bk. Elma	2
15	85	Chris Amuschwander	State Auditor	Secy. State	10 Grand View St. Bk.	4
16	830	A. H. Campbell	I. M. Howell	"	11 N. W. N. B. Bellg.	2
14	"	W. G. Hatchius	"	"	12 Madu N. B. Spok.	2
14	"	J. B. Fasdeck	"	"	13 The Mina & Mutta Bk.	2
						<hr/> \$164 75

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 21	
					On.	Amount.
Sept. 12	331	James A. Fee	C. S. Reinhart	Same	1 First Ntl. Bk. Pendleton	25 15
" 14	2220	Sherett McLaren & Sherett	"	"	2 Northern B. & T. Co.	5 00
" 14	133	Wm. A. Johnson	"	"	3 Bk. of Com. Everett	5 00
" 15	51	A. W. Buddress	"	"	4 Dex. Horton	2 00
" 10	455	L. H. Craver	"	"	5 Scand. Am. Bk.	5 00
" 15	1466	Geo. Livesey	"	"	6 Bellingham Ntl. Bk.	5 00
" 16	893	Alex. Dickinson	"	"	7 Seattle Ntl. Bk.	1 80
" 14	8128	First Ntl. Bank Mt. Vernon	"	"	8 First Ntl. Bk. Mt. Vernon	25 00
Aug. 31		Jno. With Day	"	"	9 Ger. Am. Bk.	5 00
Sept. 16	444	Attwood Kirby	"	"	10 Old Ntl. Bank Spokane	2 00
" 16	666	Shepard Burkheims & B.	"	"	11 Northwest T. & S. D. Co.	5 00
" 16	1086	McBurney & O'Connor	"	"	12 Seattle Ntl. Bk.	5 00
" 16	8973	St. Bk. of Seattle	"	"	13 St. Bk. of Seattle	5 00
" 12		N. A. Schellberg	"	"	14 Ntl. Bk. of Commerce	25 00
" 14	1463	Nazum Clark Naizum	"	"	15 Sp. & E. Tr. Co.	5 00
" 14		Lawrence Jack	"	"	16 Fid. Ntl. Bk. Spokane	2 00
" 17	1429	Broughton Ntl. Bank	"	"	17 Dexter Horton	2 00
" 17	335	S. H. Kelleran	"	"	18 Scand. Am. Seattle	2 00
" 18	1658	Hamlin & Meier	"	"	19 Dexter Horton	1 80
" 17	9691	Tucker & Hyland	"	"	20 First Ntl. Seattle	3 00
" 17	2261	Brighton Halvestadt & Lamont	"	"	21 Scand. Am. Seattle	2 00
						138 75

4

Sept. 21
Dexter Horton
Seattle, Wn.
On.

Date.	No.	Drawn By.	Favor of.	Last Endorser.	Amount.
Sept. 17	502	Longleton	C. S. Reinhart	Same	2 00
17	2616	George H. Walker	"	"	5 00
17	16197	N. W. Tr. & S. Dep. Co.	"	"	2 00
16	869	McCafferty Robinson &	"	"	2 00
17	404	Wm. E. Campbell	"	"	3 00
16	7777	Columbia Ntl. Bk.	"	"	5 00
Aug. 21	3718	Ntl. Bk. of Com.	John T. Condon	C. S. Reinhart	25 00
Sept. 16	1883	Mark F. Mendenehall	C. S. Reinhart	Same	10 00
16	423	Moulton & Jeffrey	"	"	5 00
15		Rocket	"	"	2 00
16	239	H. B. Jones	"	"	5 00
					<hr/> 66 00

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Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 21 Puget Sound St. Bk. Tacoma, Wn.	4
Sept. 21	342	W. C. Harrington	Us	Same	On.	Amount.
18		R. D. Duff & Co.	Frank Blake	"	1 Ntl. Bk. of Tacoma	5 00
15	16	Glenn H. Simons	C. S. Reinhart	"	2 Tacoma S. B. & T. Co.	12 30
17	5196	Raymond McMillan	"	"	3 Fidelity Tr.	25 00
16	830	Thos. MacMahon	"	"	4 Bk. of Calif.	2 00
16	1300	M. J. Gordon	"	"	5 Bankers Tr. Co.	2 00
17	17211	First Ntl. Bank Hoquiam	C. W. Hodgdon	Clerk C. S. Reinhart	6 " "	2 00
11	13646	Union Lbr. Co.	John Isaakson	A. R. Adams	7 Ntl. Bk. of Com.	5 00
21	1002	Us	P. S. St. Bk.		8 Fid. Tr. Co.	13 25
					9 First Ntl. Bk. Portland	1000 00
						1066 55

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Date.	No.	Drawn By.	Favor of.	Last Endorser.	Sept. 21 Wash. Paving Co. Tacoma.	4
Sept. 19	750	D. A. Williams	Frank Tavernat	Cap. Nat. Bk.	On.	Amount.
" 19	749	"	Mike Mankuso	"	1 Yourselves	5 75
" 21	752	"	W. G. Perry	Same	2 " "	1 15
					3 " "	35 00
						41 90

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**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing pages numbered from 1 to —, inclusive, constitute a full, true and correct transcript of the record and proceedings in the consolidated cases of Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, vs. A. R. Titlow, as receiver of the United States National Bank of Centralia, Washington, substituted for C. A. Snowden, Defendant, C. S. Reinhart and C. Will Shaffer, stockholders of the Olympia Bank & Trust Company, a corporation, for themselves and all other stockholders of said company, intervenors, and Roy A. Langley, as receiver of the State Bank of Tenino, a corporation, vs. United States National Bank of Centralia, a corporation, and A. R. Titlow, as receiver of the United States National Bank of Centralia, Nos. 32-E and 50-E, respectively, lately pending in this court, as required by the praecipes of counsel filed in said causes, as the originals thereof appear on file in this court, at the City of Tacoma, Washington, in the District aforesaid.

I further certify and return that I hereto attach and herewith transmit the original Citations of appellant McKinney, and of appellant Reinhart et al.,

together with original orders extending time for transcript.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees, and charges incurred on behalf of the appellant herein and also on behalf of appellee U. S. National Bank of Centralia, herein, for making the record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit, in said above-entitled causes: [288]

Clerk's fees (Sec. 8282, R. S. U. S.) for making record, certificate and return of Appellant McKinney, 427 fl. @ 15¢ ea.....	\$64.05
Certificate to transcript, 4 folios @ 15¢	.60
Seal to said certificate.....	.20
Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate and return of Appellee U. S. National Bank of Centralia, on praecipe for additional transcript, 131 folios @ 15¢ ea.....	19.65

ATTEST MY OFFICIAL SIGNATURE and the seal of the said Court, at Tacoma, in said District, this 17th day of November, A. D. 1916.

[Seal]

FRANK L. CROSBY,
Clerk.

By E. C. Stambuk,
Deputy Clerk. [289]

**Affidavit of Service of Citation on Appeal of Frank
P. McKinney, etc.**

State of Washington,
County of Thomson,—ss.

On this 28th day of June, A. D. 1916, personally appeared before me the undersigned authority, P. M. Troy, who, being duly sworn says: that he delivered a copy of the within citation to Oldham & Goodale, Solicitors of the United States National Bank of Centralia, a corporation, and A. R. Titlow, as receiver of the United States National Bank of Centralia, on the 27th day of June, 1916.

P. M. TROY.

Sworn to before me this 28th day of June, A. D. 1916.

[Seal] R. F. STURDEVANT,
Notary Public in and for the State of Washington,
Residing at Olympia therein. [290]

Citation on Appeal of Frank P. McKinney, etc.
United States of America to United States National Bank of Centralia, a Corporation, and A. R. Titlow, as Receiver of the United States National Bank of Centralia, Greeting:

You are hereby notified that in a certain cause in equity in the United States District Court for the Western District of Washington, Southern Division, wherein Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, a corporation, is complainant, and United States National Bank of Centralia, a corporation, and A. R. Titlow as re-

ceiver of the United States National Bank of Centralia, are defendants, an appeal has been allowed the complainant therein to the United States Circuit Court of Appeals, Ninth Circuit. You are hereby cited and admonished to be and appear in said court at the City of San Francisco, State of California, 30 days after the date of this citation to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy *justice* the parties in that behalf.

WITNESS the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court, Western District of Washington, Southern Division, this 27th day of June, A. D. 1916.

EDWARD E. CUSHMAN,
United States District Judge. [291]

Receipt of a copy of the foregoing notice of appeal and citation admitted, by receipt of copy this 27th of June, 1916, at Seattle, Wash.

R. P. OLDHAM,
R. C. GOODALE,
Solicitors for Defendant. [292]

[Endorsed]: No. 32-E. In the District Court of the United States for the Western District of Washington, Southern Division. Frank P. McKinney, as Receiver of the Olympia Bank & Trust Company, Complainant, vs. A. R. Titlow, as Receiver of United States National Bank of Centralia, substituted for C. A. Snowden, Defendant. Notice of Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jun. 29, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

*the District Court of the United States for the
Western District of Washington, Southern
Division.*

No. 32-E—IN EQUITY.

RANK P. McKINNEY, as Receiver of the Olympia Bank & Trust Company,

Complainant,

vs.

R. TITLOW, as Receiver of the United States National Bank of Centralia, Substituted for C. A. Snowden,

Defendant,

and

S. REINHART and C. WILL SHAFFER, Stockholders of the Olympia Bank & Trust Company, for Themselves and All Other Stockholders of Said Company,

Intervenors.

Affidavit of Service.

On this 4th day of August, 1916, personally appeared before the undersigned authority, Nora W. Gardner, who being first duly sworn says: That she delivered a copy of the within citation to R. P. Oldham and R. C. Goodale, the solicitors for the defendant, on the 31st day of July, 1916.

NORA W. GARDNER.

Subscribed and sworn to before me this 4th day of August, 1916.

[Seal]

R. G. SHARPE,

Notary Public in and for the State of Washington,

Residing at Seattle. [293]

Citation on Appeal of C. S. Reinhart et al.

United States of America to United States National Bank of Centralia, Corporation, and A. R. Titlow, as Receiver of United States National Bank of Centralia, Greeting:

You are hereby notified that in a certain case in Equity in the United States District Court for the Western District of Washington, Southern Division wherein Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, a corporation, is complainant, and the United States National Bank of Centralia, a corporation, and A. R. Titlow, as receiver of the United States National Bank of Centralia, are defendants, an appeal has been allowed the intervenors therein to the United States Circuit Court of Appeals, Ninth Circuit. You are hereby cited and admonished to be and appear in said court at the City of San Francisco, State of California, 30 days after the date of this citation and show cause if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court of the Western District of Washington, Southern Division, this 27th day of July, 1916.

EDWARD E. CUSHMAN,
United States District Judge.

Receipt of a true copy of the foregoing citation is hereby admitted this 31st day of July, 1916.

R. P. OLDHAM,
R. C. GOODALE,
Solicitors for Defendant.

Service of the foregoing citation, and also the petition for appeal and assignments of error herein admitted this 27th day of July, 1916, and issuance of citation to complainant waived.

THOS. STURDEVANT,
Atty. for Complainant. [294]

Receipt of a true copy of the foregoing citation on the 31st day of July, 1916, is hereby acknowledged.

R. P. OLDHAM,
R. C. GOODALE,
Attorneys for Defendant. [295]

[Endorsed]: No. 32-E. In the District Court of the United States for the Western District of Washington, Southern Division. Frank P. McKinney, as Receiver of Olympia Bank & Trust Co., Complainant, vs. A. R. Titlow, as Receiver of United States National Bank of Centralia, Defendant; C. S. Reinart and C. Will Shaffer, Intervenor. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Aug. 7, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [296]

Citation on Appeal of Roy A. Langley, etc.

United States of America to United States National Bank of Centralia, a Corporation, and A. R. Titlow, as Receiver of the United States National Bank of Centralia, Greeting:

You are hereby notified that in a certain case in equity in the United States District Court for the Western District of Washington, Southern Division wherein Roy A. Langley, as receiver of the State Bank of Tenino, is complainant, and United States National Bank of Centralia, a corporation, and A. R. Titlow, as receiver of United States National Bank of Centralia, are defendants, an appeal has been allowed the complainant therein to the United States Circuit Court of Appeals, Ninth Circuit. You are hereby cited and admonished to be and appear in said court at the City of San Francisco, State of California, 30 days after the date of this citation to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court Western District of Washington, Southern Division this 27th day of June, A. D. 1916.

EDWARD E. CUSHMAN,
United States District Judge.

Receipt of a copy of the above citation by receipt of copy is hereby admitted at Seattle, Washington this 27th day of June, 1916.

R. P. OLDHAM,
R. C. GOODALE,
Solicitors for Defendants. [297]

[Endorsed]: In Equity. No. 50-E. In the U. S. District Court, Western District, Southern Division. Roy A. Langley, as Receiver of State Bank of Tenino, a Corporation, Plaintiff, vs. U. S. National Bank of Centralia et al., Defendants. Citation and Proof. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jun. 28, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [298]

*In the District Court of the United States for the
Western District of Washington, Southern
Division.*

No. 32-E—IN EQUITY.

FRANK P. McKINNEY, as Receiver of Olympia
Bank & Trust Company,

Complainant,

vs.

A. R. TITLOW, as Receiver of the United States
National Bank of Centralia, Substituted for
C. A. Snowden,

Defendant,

C. S. REINHART and C. WILL SHAFFER,
Stockholders of the Olympia Bank & Trust
Company, a Corporation, for Themselves and
All Other Stockholders of Said Company,

Intervenors.

**Waiver of Issue and Service of Citation by
Intervenors.**

Come now the intervenors C. S. Reinhart and C.
Will Shaffer, stockholders of the Olympia Bank &

Trust Company, a corporation, for themselves and all other stockholders of the said corporation, intervenors, and hereby waive the issue of citation, and notice of appeal to them from the complainant herein, Frank P. McKinney, as receiver of the Olympia Bank & Trust Company, and hereby waive the service of any notice of appeal upon them, and admit that they have now, and had at the time the appeal was allowed the said complainant herein due and sufficient notice that the said complainant was appealing and was submitting his petition for appeal to be allowed by the above-entitled court, it being the intention hereby for these intervenors to fully appear herein so as to be bound by the appeal of the complainant, and to waive the issuance of citation and notice upon them.

THOS. M. VANCE,

THOS. L. O'LEARY,

Of Attorneys for Intervenors.

C. S. REINHART,

C. WILL SHAFFER,

Intervenors. [299]

[Endorsed]: No. 32-E. In the District Court of the United States for the Western District of Washington, Southern Division. Frank P. McKinney, as Receiver, Complainant, vs. A. R. Titlow, as Receiver Defendant. C. S. Reinhart, and C. Will Shaffer Stockholders of the Olympia Bank & Trust Company, for Themselves and All Other Stockholders of Said Company, Intervenors. Waiver of Issue and Service of Citation by Intervenors. Filed in the U. S. District Court, Western Dist. of Washington

Southern Division. Jul. 25, 1916. Frank L. Crosby,
Clerk. By F. M. Harshberger, Deputy.

*In the District Court of the United States for the
Western District of Washington, Southern
Division.*

No. 32—IN EQUITY.

FRANK P. McKINNEY, as Receiver of Olympia
Bank & Trust Company,

Complainant,

vs.

A. R. TITLOW, as Receiver of United States Na-
tional Bank of Centralia,

Defendant,

and

C. S. REINHART and C. WILL SHAFFER,
Stockholders of the Olympia Bank & Trust
Company, for Themselves and All Other
Stockholders of Said Company,

Intervenors.

**Order Enlarging Time to File Record to September
20, 1916.**

This matter coming on to be heard on the applica-
tion to enlarge the time to file the transcript herein,
and it appearing to the Court that there is good
cause for enlargement of time, the Court does now
hereby extend and enlarge the time to file the tran-
script herein to and including September 20th, 1916.

Dated this 27th day of July, 1916.

EDWARD E. CUSHMAN,

District Judge.

[Endorsed]: No. 32. In the District Court of the United States for the Western District of Washington, Southern Division. Frank P. McKinney, as Receiver of the Olympia Bank & Trust Company, Complainant, vs. A. R. Titlow, as Receiver of the United States National Bank of Centralia, Substituted for C. A. Snowden, Defendant, and C. S. Reinhart and C. Will Shaffer, Stockholders of the Olympia Bank & Trust Company, a Corporation and All Other Stockholders of Said Company, Intervenor. In Equity. Order. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jul. 27, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [300]

*In the United States Circuit Court of Appeals for
the Ninth Judicial Circuit.*

FRANK P. McKINNEY, as Receiver of the Olympia Bank & Trust Company,

Complainant,

vs.

A. R. TITLOW, as Receiver of the United States National Bank of Centralia, etc.,

Defendant,

C. S. REINHART and C. WILL SHAFFER,
Stockholders of Olympia Bank & Trust Company, a Corporation, for Themselves and All Other Stockholders of Said Company,

Intervenor,

and

ROY A. LANGLEY, as Receiver of the State Bank
of Tenino, a Corporation,

vs.

UNITED STATES NATIONAL BANK OF CEN-
TRALIA, a Corporation, etc. et al.

**Order Extending Time to October 20, 1916, to File
Record.**

Good cause appearing therefor,

IT IS NOW ORDERED that the time within
which the transcript on appeal in the above-entitled
causes may be returned and filed in the U. S. Cir-
cuit Court of Appeal for the Ninth Circuit, at San
Francisco, California, be and the same is hereby ex-
tended to and including the 20th day of October,
A. D. 1916.

Dated this Sept. 19th, 1916.

JEREMIAH NETERER,

U. S. District Judge, Western District of Washing-
ton. [301]

[Endorsed]: Filed in the U. S. District Court,
Western Dist. of Washington, Southern Division.
Sep. 19, 1916. Frank L. Crosby, Clerk. By F. M.
Harshberger, Deputy.

*In the United States Circuit Court of Appeals for
the Ninth Judicial Circuit.*

FRANK P. McKINNEY, as Receiver of the Olym-
pia Bank & Trust Company,
Complainant,

vs.

A. R. TITLOW, as Receiver of the United States
National Bank of Centralia, Washington,
Defendant,

C. S. REINHART and C. WILL SHAFFER,
Stockholders of Olympia Bank & Trust Com-
pany, a Corporation, for Themselves and All
Other Stockholders of Said Company,
Intervenors,

and

ROY A. LANGLEY, as Receiver of the State Bank
of Tenino, a Corporation,

vs.

UNITED STATES NATIONAL BANK OF CEN-
TRALIA, a Corporation, etc. et al.

**Order Extending Time to Novermer 20, 1916, to
File Record.**

Good cause appearing therefor,

IT IS NOW ORDERED that the time within
which the transcript on appeal in the above-entitled
causes may be returned and filed in the United States
Circuit Court of Appeals for the Ninth Circuit, at
San Francisco, California, be and the same is hereby

enlarged and extended to and including the 20th day of November, A. D. 1916.

Dated this 18th day of October, 1916.

EDWARD E. CUSHMAN,

U. S. District Judge for the Western District of Washington.

[Endorsed]: Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 18, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [302]

[Endorsed]: No. 2879. United States Circuit Court of Appeals for the Ninth Circuit. Frank P. McKinney, as Receiver of the Olympia Bank & Trust Company, a Corporation, Appellant, vs. United States National Bank of Centralia, a Corporation, and A. R. Titlow, as Receiver of the United States National Bank of Centralia, Appellees, and C. S. Reinhart and C. Will Shaffer, Stockholders of Olympia Bank & Trust Company, a Corporation, for Themselves and all Other Stockholders of Said Company, Appellants, vs. United States National Bank of Centralia, a Corporation, and A. R. Titlow, as Receiver of the United States National Bank of Centralia, Appellees, and Roy A. Langley, as Receiver of the State Bank of Tenino, Appellant, vs. United States National Bank of Centralia, a Corporation, and A. R. Titlow, as Receiver of the United States National Bank of Centralia, Appel-

lees. Transcript of the Record. Upon Appeals from the United States District Court for the Western District of Washington, Southern Division.

Filed November 20, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

FRANK P. McKINNEY, as Receiver of the OLYMPIA BANK &
TRUST COMPANY, a Corporation,

Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corpora-
tion, and A. R. TITLOW, as Receiver of the UNITED STATES
NATIONAL BANK OF CENTRALIA,

Appellees,

and

C. S. REINHART and C. WILL SHAFFER, Stockholders of OLYM-
PIA BANK & TRUST COMPANY, a Corporation, for Themselves
and All Other Stockholders of Said Company,

Appellants,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corpora-
tion, and A. R. TITLOW, as Receiver of the UNITED STATES
NATIONAL BANK OF CENTRALIA,

Appellees,

and

ROY A. LANGLEY, as Receiver of the STATE BANK OF TENINO,
Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corpora-
tion, and A. R. TITLOW, as Receiver of the UNITED STATES
NATIONAL BANK OF CENTRALIA,

Appellees.

BRIEF OF APPELLANTS

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN
DIVISION.

P. M. TROY,

Solicitor for Frank P. McKinney, as Receiver of the
OLYMPIA BANK & TRUST COMPANY, a Corporation.

Business and Post Office Address: Olympia National Bank
Building, Olympia, Washington.

FRANK C. OWINGS,

Solicitor for Roy A. Langley, as Receiver of the
STATE BANK OF TENINO.

Business and Post Office Address: Suite 8, Funk-Volland
Building, Olympia, Washington.

Filed

FEB 1 - 1917

F. D. Monckton,
Clerk.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

FRANK P. McKINNEY, as Receiver of the OLYMPIA BANK &
TRUST COMPANY, a Corporation,

Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corpora-
tion, and A. R. TITLOW, as Receiver of the UNITED STATES
NATIONAL BANK OF CENTRALIA,

Appellees,

and

C. S. REINHART and C. WILL SHAFFER, Stockholders of OLYM-
PIA BANK & TRUST COMPANY, a Corporation, for Themselves
and All Other Stockholders of Said Company,

Appellants,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corpora-
tion, and A. R. TITLOW, as Receiver of the UNITED STATES
NATIONAL BANK OF CENTRALIA,

Appellees,

and

ROY A. LANGLEY, as Receiver of the STATE BANK OF TENINO,

Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corpora-
tion, and A. R. TITLOW, as Receiver of the UNITED STATES
NATIONAL BANK OF CENTRALIA,

Appellees.

BRIEF OF APPELLANTS

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN
DIVISION.

P. M. TROY,

Solicitor for Frank P. McKinney, as Receiver of the
OLYMPIA BANK & TRUST COMPANY, a Corporation.

Business and Post Office Address: Olympia National Bank
Building, Olympia, Washington.

FRANK C. OWINGS,

Solicitor for Roy A. Langley, as Receiver of the
STATE BANK OF TENINO.

Business and Post Office Address: Suite 8, Funk-Volland
Building, Olympia, Washington.

STATEMENT BY MR. TROY, SOLICITOR FOR
FRANK P. M'KINNEY, AS RECEIVER OF
THE OLYMPIA BANK & TRUST COM-
PANY, A CORPORATION, AND BY MR.
OWINGS, AS SOLICITOR FOR ROY A.
LANGLEY, AS RECEIVER OF THE STATE
BANK OF TENINO.

In order to avoid confusion it seems proper to counsel to preface their brief by stating that Frank P. McKinney, as receiver aforesaid, began an action for an accounting against the United States National Bank of Centralia and its receiver in the District Court for the Western District of Washington, Southern Division, and thereafter a similar action was instituted by Roy A. Langley, as receiver of the State Bank of Tenino against the same defendants in the same court, and that when the McKinney case came on regularly for trial solicitors for A. R. Titlow, as receiver of the United States National Bank of Centralia, requested a consolidation of both causes. The trial was arrested until the solicitor for Langley, as receiver, as aforesaid, could be communicated with, whereupon the lower court directed a consolidation of the two causes for the purposes of trial. (Transc. of Record, pp. 46, 47, 48 and 49.) Thereafter the lower court entered its order that the causes on appeal should be consolidated and "that but one transcript and record and one set of briefs may be required and used on the said appeal." (Transc. of Record, p. 195.)

We will, therefore, conforming to the rules of this court, make separate statements of the case, separate specifications of errors and separate arguments in this brief, the McKinney appeal being prepared by Mr. Troy and the Langley appeal by Mr. Owings.

P. M. TROY,

Solicitor for Frank P. McKinney, as Receiver of the Olympia Bank & Trust Company, a Corporation.

FRANK C. OWINGS,

Solicitor for Roy A. Langley, as Receiver of the State Bank of Tenino.

STATEMENT OF THE CASE OF FRANK P. McKINNEY, AS RECEIVER OF THE OLYMPIA BANK & TRUST COMPANY, A CORPORATION, APPELLANT, VS. UNITED STATES NATIONAL BANK OF CENTRALIA, A CORPORATION, AND A. R. TITLOW, AS RECEIVER OF THE UNITED STATES NATIONAL BANK OF CENTRALIA, APPELLEES, AND C. S. REINHART AND C. WILL SHAFFER, AS STOCKHOLDERS OF THE OLYMPIA BANK & TRUST COMPANY, A CORPORATION, FOR THEMSELVES AND ALL OTHER STOCKHOLDERS OF THE SAID COMPANY, APPELLANTS, VS. UNITED STATES NATIONAL BANK OF CENTRALIA, A CORPORATION, AND A. R. TITLOW, AS RECEIVER OF THE

UNITED STATES NATIONAL BANK OF
CENTRALIA, APPELLEES.

BY MR. TROY.

This is an action brought by the Receiver of the Olympia Bank & Trust Company against the United States National Bank of Centralia, in which C. S. Reinhart and C. Will Shaffer, stockholders of the Olympia Bank & Trust Company, have intervened.

The action of the complainant revolves around, and involves three claims:

A.

A claim of \$36,550, which represents a credit taken by the United States National Bank against the Olympia Bank & Trust Company on the strength of two drafts, one for \$12,500, and dated September 15, 1914, and one for \$24,050, presumably dated the same day, drawn by W. Dean Hays, as cashier for the Olympia Bank & Trust Company to the order of the United States National Bank, and which two drafts the complainant and appellant insists were drawn by W. Dean Hays to pay his personal notes, and that by so doing he took the funds of the Olympia Bank & Trust Company to pay his personal indebtedness to the United States National Bank, all of which was well known to the officials of the said last named bank. The facts surrounding the issuance of these two drafts and the transactions leading up to the same are of considerable length and detail and will be discussed at length hereafter.

B

That prior to the insolvency of the Olympia Bank & Trust Company and the United States National Bank of Centralia, the said Olympia Bank & Trust Company for and at the request of the United States National Bank, and for the purpose of paying money owed by the United States National Bank to the State Bank of Tenino, remitted to the said State Bank of Tenino the sum of Ten Thousand Dollars, in three items, one of \$6,000, and two of \$2,000 each, which will be explained hereinafter.

C

During the solvency of the Olympia Bank & Trust Company and the United States National Bank, and during the period of August and September, 1914, the United States National Bank had on deposit funds of the Olympia Bank & Trust Company and used such funds to pay notes known and described throughout the pleadings herein as the "Blumauer Notes," to-wit: Note of T. H. McClafferty for \$2,500, and two notes of the Blumauer Logging Company of \$3,500 each, and that it charged the Olympia Bank & Trust Company with \$9,500 therefor, and took credit therefrom in its own name.

It may be well to state here that the Olympia Bank & Trust Company closed its doors on the 22d day of September, 1914, and that the United States National Bank of Centralia closed its doors on September 21, 1914, and that the State Bank of Tenino

closed its doors on the 19th day of September, 1914. (Transc. of Record, p. 64.)

The case was tried and subsequently the court rendered its decree whereby the claim for \$36,550 (A) was denied, and the claim for \$10,000 (B) was likewise denied, while the claim for the notes \$9,500 (C) was allowed, and established in favor of the appellant. (Pp. 33-35 Transc. of the Record.)

In the order outlined above, as well as the order outlined in the appellant's Bill of Complaint, (pp. 5 to 11 inc. Transc. of the Record) the \$36,550 item engages our consideration first:

A. The Olympia Bank & Trust Company was organized by the filing of its Articles of Incorporation on the 19th day of August, 1914, (p. 154 Transc. of the Record). On the 19th day of August, 1914, the United States National Bank, then a going concern, issued a certificate (being the certificate required by the laws of the State of Washington) showing that the Olympia Bank & Trust Company had on deposit with the United States National Bank \$50,000.00, and that the money was deposited preliminary to the organization of the bank. (Intervenor's exhibit 3, pp. 170 Transc. of the Record.) On the 20th of August, 1914, the bank examiner of the State of Washington issued the necessary certificate and authority to the Olympia Bank & Trust Company to do business, (see Certificate of State Bank Examiner, plaintiff's exhibit 2, p. 155 Transc. of the Record), and the Olympia Bank & Trust Com-

pany opened its doors and commenced business on the 21st day of August, 1914, for the transaction of business.

The procuring cause of the organization of the Olympia Bank & Trust Company was W. Dean Hays. He had, until June of the year 1914, been the manager of the State Bank of Tenino (see testimony of W. Dean Hays, p. 67 Transc. of the Record). In July of that year he sold his stock in the State Bank of Tenino to C. S. Gilchrist, who was the vice-president and manager of the United States National Bank of Centralia, and took up the matter of the organization of a bank in Olympia. (Testimony of W. Dean Hays, Transc. of the Record, pp. 67 and 68.) Gilchrist, as we say, was a director and vice-president of the United States National Bank. (Testimony of C. S. Gilchrist, p. 114 Transc. of the Record.) The said C. S. Gilchrist was the active manager of the bank. (See testimony of George Dysart, p. 114, Transc. of the Record.) Prior to the organization of the Olympia Bank & Trust Company both Hays and Gilchrist were anxious to procure the organization of a bank in Olympia. The United States National Bank was at Centralia, a city in the southwestern portion of the State of Washington. It was interested in another bank in Centralia, the Union Loan & Trust Company, and also the Willapa Harbor State Bank, at Raymond. Its funds were loaned out heavily to lumbering concerns, and it was trying to realize on its loans, and strengthen its resources. (See testimony of George Dysart, pp. 112

and 114 Transc. of the Record.) (Testimony of C. S. Gilchrist, pp. 114 to 134 inc. Transc. of the Record.) (Testimony of Frank A. Hill, p. 106 Transc. of the Record), and it was very anxious to start a bank in Olympia, in order that it might secure a feeder. In addition thereto, it was heavily interested in the State Bank of Tenino. (Testimony of C. S. Gilchrist, p. 129 Transc. of the Record.) Mr. Hays also was anxious to start a bank in Olympia. Olympia is distant from Centralia about thirty miles, and Gilchrist telephoned frequently to Mr. Hays in Olympia, and transacted the business of opening the Olympia Bank & Trust Company in the home of Hays at Olympia. (Testimony of W. Dean Hays, p. 69 Transc. of the Record.)

The circumstances leading up to the organization of the Olympia Bank & Trust Company are graphically told by Mr. Hays. (Testimony of W. Dean Hays, pp. 66 to 71 inc. Transc. of the Record.) Gilchrist frequently telephoned to Hays and Hays procured five stockholders to give notes aggregating \$11,450, and other stockholders who took stock and paid cash therefor in the sum of \$2,000, or a total of \$13,450. These notes were issued to W. Dean Hays, and dated August 15, 1914, and were notes signed as follows, to-wit:

C. Will Shaffer, \$1,100.00; C. S. Reinhart, \$1,-650.00; Charles E. Hewitt, \$1,100.00; W. A. Weller, \$1,100.00; F. G. Blakeslee, \$1,000.00, and I. M. Howell, \$5,500. These notes were secured from these

several stockholders on the assumption that Hays was loaning them the money personally to buy the stock. (See testimony of W. T. Cavanaugh, C. S. Reinhart, I. M. Howell, Charles E. Hewitt, C. Will Shaffer, pp. 91, 99, 100, 101 and 104, Transc. of the Record.) Thereupon Gilchrist, after telephoning Hays and making arrangements with him came to Olympia on the evening of the 19th day of August, 1914, with the cashier of the United States National Bank, J. W. Daubney, whereupon Hays, at his said home in Olympia, endorsed the notes of Shaffer, et al., for \$11,450, and paid the \$2,000 in cash, and gave his own notes for \$36,550 (one for \$12,500, and one for \$24,050) to the United States National Bank, for which the United States National Bank, through its cashier, Mr. Daubney, issued a certificate of deposit for \$50,000. (See intervenor's exhibit 3, p. 170 Transc. of the Record), and thereafter the Olympia Bank & Trust Company opened its doors and commenced business. It was understood in the beginning that the principal deposit of the Olympia Bank & Trust Company was to be carried in the United States National Bank at Centralia. (Testimony of W. Dean Hays, p. 70 Transc. of the Record.) (Testimony of C. S. Gilchrist, p. 128 Transc. of the Record.) When Gilchrist came to Olympia he brought \$2,500 with him, so that Hays could open the bank. The stockholders other than Hays, in the Olympia Bank & Trust Company subscribed for stock in the sum of \$13,450, while Hays subscribed for stock in his own name in the sum of \$36,550.

Upon doing this the Olympia Bank & Trust Company opened its doors and commenced business as we have said, and continued to do business until September 22, when it failed. The United States National failed the day before. A careful reading of the testimony of Mr. Hays and Mr. Gilchrist, being the only parties involved, is convincing to the effect that the United States National Bank saw fit to take the notes of the other stockholders for \$11,450, and \$2,000 in cash, and Hays' notes for \$36,550, and to give as consideration \$50,000 deposit or credit to the Olympia Bank & Trust Company. Upon the strength of the organization of the Olympia Bank & Trust Company it secured deposits from various depositors and it continually remitted money to the United States National Bank, and the United States National Bank became the beneficiary to the extent of \$45,498.91, which it secured in its depository from the Olympia Bank & Trust company by reason of the organization of the Olympia Bank & Trust Company. (See the following testimony of W. Dean Hays, p. 71, Transc. of Record, Plaintiff's Ex. 5, Transc. of Record.)

About the time the United States National Bank of Centralia was to close its doors, according to the testimony of Hays, and on August 15th, 1915, Gilchrist came to the residence of Hays in Olympia, arriving at about 6 o'clock in the morning, and told Hays that the Bank Examiner was at Centralia and would examine the United States National Bank and that the said examiner would object to the two notes

aggregating \$36,550, and brought with him two drafts, prepared by Gilchrist, on the stationery of the United States National Bank, for Hays to sign, and Hays did so with the agreement that in case the examiner objected to the two notes, to-wit, Hays' notes, that he would use the drafts and afterwards Hays would return the notes, and continue the agreement that they had entered into before, to-wit: that the United States National Bank would carry Hays' notes. The drafts were given with the understanding that they were not to be used except in case the Bank Examiner objected to the two notes. These drafts were never returned to the Olympia Bank & Trust Company. As we say, they were written on the stationery of the United States National Bank. One of the drafts, to-wit: the one for \$12,500, was found at Centralia after the United States National Bank went into the hands of a receiver. (See p. 72 Transc. of the Record.) The other has never been seen. This draft was not marked paid (Intervenor's exhibit 4, p. 171 Transc. of the Record). Neither of the drafts were returned to the Olympia Bank & Trust Company marked paid, and as we say, one was found among the files of the United States National Bank, not marked paid, and the other has never been found. (See testimony of W. Dean Hays, p. 72 et seq. Transc. of the Record.)

This is not contradicted by Gilchrist or any of the officers of the United States National Bank, and in any event it is clear as we say, that Hays paid his own indebtedness of \$36,550 to the United States Na-

tional Bank with funds of the Olympia Bank & Trust Company. It was not attempted to undo the transaction as to the \$2,000 in cash, nor as to the notes of the other stockholders aggregating \$11,450, but it was attempted to turn back the Hays notes, and take credit therefor out of the deposits or funds of the Olympia Bank & Trust Company with the United States National Bank in the sum of the Hays notes, to-wit: \$36,550.

B. As to the \$10,000 remittances by the Olympia Bank & Trust Company, at the request of the United States National Bank of Centralia for Tenino, the evidence is quite simple and plain. The Olympia Bank & Trust Company owed the State Bank of Tenino no money at any time. (Testimony of Isaac Blumauer, p. 81 Transc. of the Record), and according to all of the testimony and especially the testimony of Blumauer, it will be seen that the United States National Bank at all times was indebted to the State Bank of Tenino. The testimony of Hays and of Blumauer is that Blumauer, who was the manager of the State Bank of Tenino, called up over the telephone, Gilchrist, of the United States National Bank, asking for money. The United States National thereupon called up Hays and asked Hays to remit the money, which he did. Hays, or the Olympia Bank & Trust Company, charged the remittance to the United States National Bank, and credit was given the United States National Bank for the remittances by the said State Bank of Tenino. Gilchrist, for the United States National Bank, admits

that he was called up by Blumauer for the State Bank of Tenino and asked to remit money (which the United States National owed the State Bank of Tenino), for it, the State Bank of Tenino. He admits also calling up Hays of the Olympia Bank & Trust Company and asking Hays to remit, but he contends that the Olympia Bank & Trust Company did so on its own initiative (although the Olympia Bank & Trust Company did not owe the State Bank of Tenino anything) and that its claim is against the State Bank of Tenino. (See generally on this subject: Testimony of W. Dean Hays, pp. 74 and 75, *Transe. of the Record.*) (Blumauer, pp. 80 and 82, *Transe. of the Record*; Gilchrist, p. 130, *Transe. of the Record*; Roy A. Langley, p. 65, *Transe. of the Record.*) In fact, there is no contradiction in the record. The appellant is entitled to a credit against the United States National Bank in the sum of \$10,000, and in any event would be entitled to a credit against the State Bank of Tenino in the sum of \$10,000, if not against the United States National. However, the transaction was plain. The United States National Bank owed money to the State Bank of Tenino; the State Bank of Tenino owed other creditors, and for and at the request of the United States National Bank, the Olympia Bank & Trust Company, which owed nothing to the State Bank of Tenino, or to the United States National Bank, remitted money at the request of the United States National Bank, and in any event the United States

National Bank became indebted to the Olympia Bank & Trust Company for such sum, so remitted.

C. No complaint is made of the action of the court in reference to this feature. It was the claim of the appellee that these notes were bought by the Olympia Bank & Trust Company. These notes were among the papers of the United States National Bank when it failed. (Testimony of W. Dean Hays, p. 73, Transc. of the Record.) This represents a charge made under date of September 4, 1914. No such paper was ever in the hands of the Olympia Bank & Trust Company (p. 73, Transc. of the Record). Mr. Gilchrist says that the three notes had been taken by the United States National Bank from the State Bank of Tenino. They were charged up against the Olympia Bank & Trust Company, September 4, 1914. "Our bank remained open for three weeks after that; still we had never sent the notes to the Olympia Bank & Trust Company, and never notified it." They further stated that all of the charges made back and forth between the United States National Bank and the Olympia Bank & Trust Company were confirmed by letter, but that this was one exception. The reason, he says, that the Olympia Bank & Trust Company was not notified, and that the charge was not confirmed by letter, and why they retained the notes for three weeks after the said September 4, 1914, and before his bank closed, was because he expected to get renewal notes, and send them to the Olympia Bank & Trust Company. These renewal notes were never procured

and never sent. (Testimony of C. S. Gilchrist, pp. 130 and 131, Transc. of the Record.) It is manifest that there was no error in the court's ruling and that there was nothing upon which to base the contention that a sale had been made.

In general, the statements of account between the two banks are shown very readily by the two exhibits, which we set forth in the brief following. The first is plaintiff's exhibit No. 4 and which is made up from the records and data found by the receiver, McKinney, when he became receiver of the Olympia Bank & Trust Company, and which is explained by his testimony, (pp. 51 to 63 inc., Transc. of the Record, while plaintiff's exhibit 5 is a statement of account prepared by the receiver of the United States National Bank and was introduced by the plaintiff as exhibit No. 5, with the distinct understanding and reservation that the plaintiff was not bound by it, but that it was introduced solely for the purpose of illustrating the differences between the two banks. (See testimony of Frank P. McKinney, pp. 61 and 62, Transc. of the Record.) One, it must be understood, is made up from the records of the Olympia Bank & Trust Company, to-wit, Plaintiff's Exhibit 4, the first statement. While the second, Plaintiff's Exhibit 5, is made up from the records of the United States National Bank of Centralia. The items that are checked are items over which there is no controversy, while the items which have a cross to the left are the disputed items in plaintiff's exhibit 4, the first statement. While in Plaintiff's Ex-

hibit 5, the second statement, the items of debits on the left hand side concerning which there is no controversies are checked, while the items over which there is controversy are indicated by checks and crosses, the checks and crosses being to the right while on the credit side, the checks being items over which there is no controversy, are to the left, while the items over which there is a controversy are marked by a cross. Herewith follow the statements:

U. S. NAT'L. BANK, CENTRALIA.

In account with THE OLYMPIA BANK &
TRUST COMPANY

Dr.

1914.

									Cr.
Aug. 18	Rem. to Seattle	✓	2000	✓	✓	Aug. 19	Coin		2500
21	" " Tacoma	✓	5000	✓	✓	25	Rem. Seattle		1000
24	" " Seattle	✓	3795	✓	✓	Sept. 3	Draft		1000
	"	✓	160.38	✓	✓	5	Stock sold		1100
	"	✓	255.95	✓	✓		" "		400
	"	✓	358.10	✓	✓	8	" "		330
25	"	✓	12500.	✓	✓	11	Draft		3000
26	"	✓	147.25	✓	✓	14	"		5000
27	"	✓	147.	✓	✓	Bal.			89169.26
			40000						
	" to Seattle	✓	2000.	✓	✓				
	Captl. & Und. Profits	×	55000.	?	o				
28	Rem.	✓	216.60	✓	✓				
29	"	✓	52.	✓	✓				
31	Tel. Tfr to Tacoma	✓	2000.	✓	✓				
	Cost of Telegram	×	.35	o	✓				
	Rem.	✓	56.50	✓	✓				
Sept. 1	"	✓	94.65	✓	✓				
	"	✓	338.30	✓	✓				
3	" to Tacoma	✓	4000.	✓	✓				
4	"	✓	377.18	✓	✓				
10	" Seattle	✓	5000	✓	✓				
12	" Seattle for Tenino								103499.26
		×	6000.	o					
15	" " " "	×	2000.	o		89169.26	103499.26		2500
18	Coin " " "	×	2000.	o		7000	48000		1000
									1000
			103499.26			82169.26	55499.76		8

Filed Dec. 15, 1915).

12500.

(Plaintiff's Exhibit 4, p. 157, Transc. of Record.)

Referring to exhibit 4, made up from the records of the United States National Bank, it will be seen that the item of \$55,000, for which the United States National Bank is debited, is disputed, and also the items at the foot of the debit side, being the remittances to Seattle for Tenino of \$6000, \$2000, and \$2000, respectively, are also in controversy. On the right hand side there are three items of stock sold, one of \$1100, one of \$400, and one of \$330, which are conceded by appellant to be error. (See testimony of Frank P. McKinney, pp. 60 and 61, *Transc. of the Record*.) The \$55,000 item over which there is controversy and which is preceded by a cross should be \$50,000. This was the original \$50,000 credit, but it was changed to \$55,000, because the officials of the Olympia Bank & Trust Company conceived the notion after they had organized their bank and received their credit of \$50,000 from the United States National Bank, to add ten per cent to their stock subscriptions and create a surplus (See testimony of Frank P. McKinney, pp. 60 and 61, *Transc. of the Record*) and (testimony of W. Dean Hays). Correcting exhibit 4 so as to coincide with the corrections just mentioned, would leave the statement shown on plaintiff's exhibit No. 4 correct, except that the balance due the Olympia Bank & Trust Company from the United States National Bank would be \$82,169.20. (Testimony of Frank P. McKinney, p. 59, *Transc. of the Record*.) By consulting exhibit 5, being the statement made by the receiver of the United States National Bank, it will be seen that on

each side of the ledger are two \$15,000 items, which are both marked by a cross. Both of these items are unexplained, and in as much as they balance each other no attention was paid to the same, and it is not known, and it is unnecessary to know what they signify. It will be seen on the debit side that there are three items over which there is a controversy, to-wit:

August 31	\$12,500
September 4	9,500
September 15	24,050

These items are charged up against the Olympia Bank & Trust Company, and it is readily seen they represent the two drafts aggregating \$36,450, and also the item of \$9,500 represented by the Blumauer notes. There is nothing in the statement, plaintiff's exhibit 5, of the United States National Bank, that shows anything concerning the ten thousand dollars remitted from the Olympia Bank & Trust Company for the United States National Bank on account of Tenino. If the contention of appellant is correct here, there should be deducted from the charges against the Olympia Bank & Trust Company the two drafts aggregating \$36,450, and there should be added the \$10,000 on account of the Tenino transaction, and the court can at once see that it will make the statements between the two banks much different, and will verify the testimony of Frank P. McKinney referred to hereinbefore and render his conclusion about the amount due the Olympia Bank & Trust Company correct.

A curious thing to note about exhibit 5 is that one of the drafts, to-wit: the one for \$24,050, is charged against the Olympia Bank & Trust Company of date September 15th, 1914, while the draft for \$12,500 is charged as of date August 31, 1914, and yet the testimony shows that both of the drafts were brought by Gilchrist from Centralia to Olympia on the 15th day of September, 1914, just prior to the failing of the banks, and that they were drawn in Mr. Hays' residence in Olympia, and the \$12,500 draft, which was introduced in evidence shows that it was dated on September 15, 1914. (See intervenor's exhibit 4, p. 171, Transc. of the Record.) This is a striking circumstance to show the manipulation of the said United States National Bank.

SPECIFICATIONS OF ERROR IN THE CASE
OF FRANK P. McKINNEY AS RECEIVER
OF THE OLYMPIA BANK & TRUST COM-
PANY, A CORPORATION, APPELLANT,
VS. UNITED STATES NATIONAL BANK
OF CENTRALIA, A CORPORATION, AND
A. R. TITLOW AS RECEIVER OF THE
UNITED STATES NATIONAL BANK OF
CENTRALIA, APPELLEES, AND C. S.
REINHART AND C. WILL SHAFFER,
STOCKHOLDERS OF THE OLYMPIA
BANK & TRUST COMPANY, A CORPORA-
TION, FOR THEMSELVES AND ALL
OTHER STOCKHOLDERS OF SAID COM-
PANY, APPELLANTS, VS. UNITED

STATES NATIONAL BANK OF CENTRALIA, A CORPORATION, AND A. R. TITLOW AS RECEIVER OF THE UNITED STATES NATIONAL BANK OF CENTRALIA, A CORPORATION, APPELLEES.

1. The court erred in denying the claim of the appellant in the sum of \$36,550 (being the amount of the two drafts), and in denying and dismissing the appellant's action therefor.

2. The court erred in denying the claim of the appellant for ten thousand dollars remitted by the Olympia Bank & Trust Company, at the request of the United States National Bank of Centralia, for Tenino, and in dismissing appellant's action therefor.

3. The court erred in requiring the appellant to accept a return of the notes aggregating the face value of \$11,450, secured as follows:

Note of F. G. Blakeslee.....	\$1000.00
Note of W. A. Weller.....	1100.00
Note of C. Will Shaffer.....	1100.00
Note of C. S. Reinhart.....	1650.00
Note of Charles E. Hewitt....	1100.00
Note of I. M. Howell.....	5500.00

when the said notes would have been retained as the property of appellee and the appellant permitted to recover according to the demand of his complaint.

4. The court erred in cancelling and holding that the credit of \$48,000 in favor of the appellant of which \$36,550 set forth in the appellant's first cause

of action formed a part and certified in favor of the Olympia Bank & Trust Company and in not allowing the same to appellant.

5. The court erred in refusing to allow all the claims on the part of the appellant and intervenors to preferred and prior liens against the assets in the hands of the appellee receiver, when the said claims should have been allowed as preferred claims.

6. The court erred in allowing the appellant a general claim in the sum of \$25,998.91 only, and no more on the accounting herein when the appellant should have been allowed the sum of \$83,998.91.

7. The court erred in requiring the appellant to pay its own costs.

The foregoing specifications of error all arise out of the decree (pp. 33, 34, and 35, Transc. of the Record) and other records heretofore and hereinafter referred to.

ARGUMENT.

We naturally discuss the specifications in the order outlined.

SPECIFICATION OF ERROR NO. 1.

The claim of appellant for \$36,550 represents funds of the Olympia Bank & Trust Company that were taken from the said bank to pay the private indebtedness of W. Dean Hays. The court, by reading the statement of the case and consulting the record, will see that there is no dispute but what Hays gave

his notes to the United States National Bank, and received therefrom \$36,550 with which to buy stock in the Olympia Bank & Trust Company. In other words, Hays was a subscriber to the stock of the Olympia Bank & Trust Company to the extent of \$36,550. This, of course, he had to pay in money to the Olympia Bank & Trust Company. Instead of giving the money direct he gave his notes for this sum to the United States National Bank, and the United States National Bank paid the money in the form of a deposit covering it, and the \$11,450 of other notes, and \$2000 in cash, or \$50,000, for which it gave a certificate of deposit, and which enabled the Olympia Bank & Trust Company to obtain its charter and commence business. Now the relation between Hays and the United States National Bank in such a deal was that of borrower and lender. In other words, Mr. Hays borrowed \$36,550 from the United States National Bank, and gave his notes therefor. The testimony shows that Gilchrist was the active manager and first vice-president of the United States National Bank, and had full power and authority to direct its business and to make loans for his bank. He saw fit to loan Hays \$36,550 and take his notes therefor. The agreement was as simple as it could be. Hays individually procured \$50,000 from the United States National Bank, and with this \$50,000 he bought \$36,550 worth of stock for himself and loaned the other stockholders \$11,450, with which to buy stock, in a bank that was organized after the money was borrowed. And in addition to this, \$2000

was paid for stock in cash. Hays took notes from the other stockholders in the sum of \$11,450 and assigned them to the United States National Bank, and gave his own note in the sum of \$36,550. Any claim that the United States National Bank would have with relation to these notes would therefore be against Hays as to the \$36,550 personally, and against the other stockholders for the \$11,450, and not against the Olympia Bank & Trust Company. When Mr. Hays, therefore, issued the two drafts and took up these two notes he had no more authority or right to take the money out of the bank (which he did) and pay the same, than he would to commit highway robbery, because the money of the bank was not his. This, however, was just what he did. He took the money belonging to the Olympia Bank & Trust Company to pay his own private indebtedness. The law is very plain in regard to such transactions. Gilchrist, the manager of the United States National Bank, knew when he took the drafts from Hays that he (Hays) was taking the same to pay the private indebtedness of Hays to his (Gilchrist's) bank, and he knew that Hays was not using his own money, but was taking the money of the bank to pay his (Hays') indebtedness. It must be remembered that the other stockholders and directors of the Olympia Bank & Trust Company knew nothing about the deal by which Hays obtained the money from the United States National Bank to open the Olympia Bank & Trust Company. They even did not know that their own notes had been assigned to

the United States National Bank by Hays. None of them knew that the drafts heretofore mentioned had been issued by Hays, and each supposed that he was the only one borrowing the money he was borrowing to buy his stock, and that he was borrowing the money from Hays, and none of them knew of Hays issuing the drafts and taking the funds of the bank to pay his own personal indebtedness. (See testimony of C. Will Shaffer, p. 91, *Transc. of Record*; C. S. Reinhart, p. 99, *Transc. of Record*; W. T. Cavanaugh, p. 100, *Transc. of Record*; Charles E. Hewitt, p. 101, *Transc. of Record*; I. M. Howell, p. 104, *Transc. of the Record*.)

It will be seen also that these men were all men of standing: I. M. Howell was Secretary of State of the State of Washington; Shaffer was Law Librarian; Reinhart was Clerk of the Supreme Court of the State of Washington; while Cavanaugh had been postmaster, and Charles E. Hewitt was a merchant.

See the following, which we think is applicable:

“Where a transaction between the president of a bank and defendants, in which the president paid defendants money belonging to the bank, which he wrongfully appropriated, was concealed from the bank, and the mere statement of the fact to the directors would have disclosed the fraud, defendants are liable to the bank for the money received. In the absence of special authority, conferred by the directors of the bank

by resolution, acquiescence, or implied assent, the president of the bank has no authority to draw drafts on its funds in payment of personal debts. That the president was permitted to draw them through culpable negligence of the directors is unavailing, where there is no finding of such negligence, or that defendants were influenced thereby to accept the drafts. But if the directors of a bank, trusting the president's integrity, or individual responsibility, authorized him to use drafts drawn on its funds for private purposes, whether paid for at the time or not, any loss resulting from the misuse of such authority would fall on the bank, and not on the third person, who had taken the drafts for value and in good faith, which, in such case, would be determined by the established rules governing the transfer of negotiable paper.

CASHIER.—A bank may recover funds misappropriated by its cashier from one receiving them with knowledge of the misappropriation. Where the cashier of a bank pays his individual debts by entering the amount to the credit of his creditor, the bank may recover of the creditor the money it may pay out on checks drawn on the faith of the unauthorized credit.”

Michie on Banks and Banking, Vol. 1, p. 856.

A leading case, and indeed the leading case to be found always in a discussion of this feature of the law, is *Lamson v. Beard*, 36 C. C. A. 56. As bearing

on the question of the payment of an individual debt of a bank officer with a bank's funds, we respectfully cite the court to the following cases and citations.

Payment of Individual Debt of Bank Officer with Bank's Funds.

Cited in *Hier v. Miller*, 68 Kan. 262, 63 L. R. A. 956, 78 Pac., holding bank cashier without implied authority to bond bank by entry as deposit amount of his indebtedness in customer's pass book; *Cals v. Chase, Nat'l Bank*, 43 C. C. A. 498, 104 Fed. 216, holding clear and satisfactory proof required to justify finding of cashier's implied authority to draw cashier's draft in payment of individual debt, from acquiescence of directors; *Campbell v. Manufacturers Nat. Bank*, 67 N. J. L. 308, 91 Am. St. Rep. 438, 51 Atl. 497, denying bank's liability for cashier's use of funds for individual debt because of failure to detect transaction when defect not discoverable by ordinary inspection; *Home Sav. Bank v. Otterbach*, 135 Ia. 160; 124 Am. St. Rep. 267, 112 N. W. 769, holding the burden is on one dealing with a bank cashier who uses bank funds for his own benefit to show facts estopping the bank from denying authority; *Newburyport v. Spear*, 204 Mass. 151, 90 N. E. 422, holding it no defense in an action for money received on a check drawn on bank account of city by treasurer without authority on payment of personal debt that defendant paid money to others, retaining

only the amount of commission; *Mendel v. Boyd*, 3 Neb. (unof.) 479; 91 N. W. 860, holding to same effect; *Kitchens v. Teasdale Commission Co.*, 105 Mo. App. 469, 79 S. W. 1177, holding the carelessness of bank directors is no defense to defendant, a commission company, receiving funds misappropriated by cashier by means of drafts on bank's correspondents which defendant company collected; *Hawkeye Gold Dredging Co. v. State Bank*, 157 Fed. 263, on right of a corporation to recover from a bank fund wrongfully transferred to it by corporation's treasurer; *Langlois v. Gragnon*, 123 La. 457, 22 L. R. A. (N. S.) 416, 49 So. 18, holding bank not liable where cashier notified his own creditor that a sum had been placed to his credit to pay debt.

Cited to footnote to *Hier v. Miller*, 63 L. R. A. 952, which sustains right of bank to recover amount paid out on checks drawn upon the faith of an unauthorized entry by the cashier of the amount of his individual debts as a credit on the pass book of his creditor.

Cited in Notes (52 L. R. A. 796) on liability of bank or other depository or of drawee, for taking deposit of agent, fiduciary or other representative to pay his own debt (31 L. R. A. (N. S.) 171) on right of taker of commercial paper of corporation for officer's individual debt.

Distinguished in *First National Bank v. Byrnes*, 61 An. 466, 59 Pac. 1056, denying

agent's liability for teller's misappropriation of bank's funds by drafts wrongfully issued and sent to company in distant city.

We suggest a careful reading of the case of *Lamson vs. Beard* will convince anyone that the transaction here was wholly unauthorized and void, and that the appellant as receiver of the bank has a right to recover the money so illegally paid. We maintain that in this case the court must require each bank to meet its legal obligations and give each bank its legal due and require an accounting upon such basis. Hays was indebted to the United States National Bank on his own notes for \$36,550. He took this amount of money out of the coffers of the Olympia Bank & Trust Company and paid his private indebtedness. Under the authority of *Lamson v. Beard*, the Olympia Bank & Trust Company had a right to commence and maintain an action for the recovery of the money illegally taken from it by its cashier to pay his own private debts, and also, in accordance with what is held in the said case of *Lamson v. Beard*, the receiver of the Olympia Bank & Trust Company has a right to recover the same also.

See also the following:

“A bank or its receiver may recover funds wrongfully used by an officer of a bank to pay the officer's own debt (and this notwithstanding the negligence of the directors.)”

Kitchens v. Teasdale Commission Co., 79 S. W. 1177, 105 Mo. App. 463.

“Where the president of a bank wrongfully appropriated the bank’s funds to a personal use, by means of drafts, the bank is not estopped by the president’s course from denying his authority to draw such drafts.”

Lamson v. Beard, 45 L. R. A. 822, 94 Fed. 30, 36 C. C. A. 56.

“A bank is presumed to know only what its officers know when officers act within the scope of their authority, hence it is not chargeable with knowledge of his fraudulent use of the bank’s funds for his private purposes.”

Knobelock v. Ger. Sav. Bk., 27 S. E. 962, 50 S. C. 250.

“Where the cashier of a bank pays his individual debt by entering the amount to the credit of his creditor the bank may recover of the creditor.”

Heir v. Miller, 75 p. 77, 68 Kan. 258, 63 L. R. A. 952.

Ft. Dearborn, Neb. v. Seymore, 73 N. W. 724, 71 Minn. 81.

Kitchens v. Teasdale, 105 Mo. App. 463, 79 S. W. 1177.

“The general authority of a cashier manager of a bank does not authorize him to issue drafts for himself or for his private use.”

Mendel v. Boyd, 99 N. W. 493, 71 Neb. 657, 3 Dec. Dig. Banks & Banking 117, 6 Cent. Dig. Banks & Banking 288.

The contract had not been repudiated (indeed could not be) before the insolvency of the two banks. The receiver cannot repudiate the agreement now. Supposing that neither of the banks had gone into the hands of a receiver, and supposing that Hays had taken the money he did to pay his own notes, would the court hold that the Olympia Bank & Trust Company could not maintain an action to recover the money so illegally taken and paid to the United States National Bank? The answer is that it would not. Suppose that Hays had refused to pay his notes. Could the United States National Bank maintain an action against the Olympia Bank & Trust Company for \$36,550? Not for an instant! The mere fact that the two banks went into the hands of receivers does not change their contractual status. The duties of a receiver are to close and settle up the affairs of their defunct banks and enforce their contracts. Thus neither has a right to disavow or set aside the contracts or legal rights of their respective banks. The contracts are as enforceable now as they were before insolvency.

Tilford v. Atlantic Match Co., 144 Fed. 924.

King v. Pomeroy, 121 Fed. 287, 58 C. C. A. 209.

Schultz v. Phenix Ins. Co., 77 Fed. 375.

Morins v. Lee, 30 Fed. 298 (affirmed in 141 U. S. 132).

“The general rule is that a receiver takes the rights, causes and remedies which were in the corporation, individual or estate whose receiver

he is, or which were available to those whose interests he was appointed to represent.” 34 Cyc. 388.

And of course the contra is true that he is subject to the obligations on the part of the corporation for which he becomes receiver. It cannot, it seems to us, be successfully contended that the contractual status of these parties can be set aside, and we most strenuously urge that the appellant is entitled to prevail as to the cause of action upon the \$36,550. There is another feature of this specification of error, which is ratification by reason of failure to rescind the contract in toto, but this will be discussed in connection with Specification No. 3.

SPECIFICATION OF ERROR NO. 2.

This relates to the \$10,000 claim for money remitted for the State Bank of Tenino. The evidence is very plain that the Olympia Bank & Trust Company was not indebted to the State Bank of Tenino, and there is no controversy over the fact also that the United States National Bank was always indebted to the State Bank of Tenino. (See testimony of Isaac Blumauer, pp. 80 to 87 inc., Transc. of the Record.) There is no dispute over the testimony either that the Tenino bank called on the Centralia bank for money, at the time that these \$6000, and the two \$2000 remittances were made. The United States National Bank instead of remitting this money itself,

requested the Olympia Bank & Trust Company to remit, and the Olympia Bank & Trust Company did remit for the United States National Bank. This, it would seem plain to us, makes the United States National Bank indebted to the Olympia Bank & Trust Company, in each instance, when the United States National Bank was called upon to pay these items, aggregating \$10,000 to the State Bank of Tenino, as the said United States National Bank procured the Olympia Bank & Trust Company to pay the same. There cannot, it seems to us, be any contention but that the United States National Bank under the testimony in this case is indebted to the Olympia Bank & Trust Company for the said \$10,000.

However, if in any event, the court can ignore the legal obligation as to this ten thousand dollars, it must give the appellant relief against the State Bank of Tenino in that amount, for in any event it appears that the Tenino bank received the benefit of the \$10,000, and the Olympia Bank & Trust Company was never indebted to it. The testimony of the receiver of the State Bank of Tenino shows this conclusively. (See testimony of Roy A. Langley, pp. 63-65, Transc. of Record, and pp. 107-111 inc., Transc. of the Record. See also testimony of Isaac Blumauer referred to hereinbefore, and also the testimony of Gilchrist.)

SPECIFICATION OF ERROR NO. 3.

This involves the returning of the notes for \$11,450, being the notes of the stockholders other than W.

Dean Hays. These notes were holden by the United States National Bank at the time it went into the hands of a receiver. These notes were never offered to be returned until at the trial of the cause. As has been pointed out there was an attempt, just prior to the failure of the two banks, on the part of the United States National Bank to repudiate the deal between it and Hays, and by which Hays received the credit of \$50,000, to the extent only of the \$36,550. In other words, it was attempted to repudiate the deal in part and let it stand in part. The United States National Bank affirmed the deal so far as the notes of Blakeslee, Weller, Shaffer, Reinhart, Hewitt and Howell were concerned, and the \$2000 cash that was furnished, but attempted to repudiate the deal so far as the two notes of W. Dean Hays were concerned. This cannot be done. This specification of error also bears upon Specification of Error No. 1. The contract was ratified by the United States National Bank up to the very moment of its insolvency and during the period of over a month, representing the life of the Olympia Bank & Trust Company, the course of dealing between the two banks which they were recognizing and carrying on, the result of which in the finality, eliminating all of the notes and the \$50,000 (less \$2000 in cash) resulted in a net gain of \$45,498 to the United States National Bank. Just prior, however, to the insolvency of the United States National Bank it attempted to repudiate the deal as to the \$36,550 (or rather to circumvent it by the issuance of the two drafts), but as to the \$11,450 of notes

represented by the other stockholders, no attempt was made to repudiate or interfere with the agreement. The testimony shows that the officers of the United States National Bank were willing to retain these notes, because they were from good and reliable men, and men upon whom the bank had reliance. In fact the first that was ever heard of the return of these notes was when the present receiver of the United States National Bank answered in this case, and the notes were retained by the receiver at all times and were retained by the United States National Bank and were never surrendered or offered to be surrendered or released until the action was tried in December, 1915, over a year after the failure of the bank. A contract cannot be rescinded in part and affirmed in part. It must be rescinded in toto.

“A reversion must be in toto. He cannot affirm a contract in part and repudiate it in part. He cannot accept the benefits on the one hand while he shirks the disadvantages on the other hand.” 9 Cyc. 438.

Hunter v. Stembridge, 17 Ga. 243.

Bell v. Keeper, 39 Kan. 105, 17 Pac. 785

Brill v. Rack, 15 S. W. 511.

Barrie v. Earle, 58 Am. Rep. 156.

Merrill v. Wilson, 66 Mich. 232.

Estus v. Reynolds, 75 Mo. 563.

Burnham v. Spooner, 10 N. H. 532.

Butler v. Prentiss, 71 N. Y. St. 383.

Grymes v. Sanders, 93 U. S. 51.

See the following:

“Where a party desires to rescind upon ground of mistake or fraud he must, upon the discovery of the facts, at once announce his purpose and adhere to it. If he be silent, and continues to treat the property as his own, he will be held to have waived the objection, and will be conclusively bound by the contract, as if the mistake or fraud had not occurred. He is not permitted to play fast and loose.”

Grymes v. Sanders, et al., 93 U. S. 55-62.

However, there was no attempt at rescission at all as the evidence is disclosed in the record herein. When Gilchrist, the active manager and vice-president of the United States National Bank, became fearful that the bank examiner would not pass the two Hays notes he sought to obviate the situation by taking the drafts for the same, and he attempted by this means to take money of the Olympia Bank & Trust Company for the individual debts of Hays. As a matter of fact he never went to the extent of ever marking the drafts paid, and they were never returned to the Olympia Bank & Trust Company as they should have been, showing payment. Indeed the only effort to show that they were paid was the charge on the books of the United States National Bank of the items against the Olympia Bank & Trust Company. The receiver cannot repudiate the agreement and now return the notes of the other stockholders. More than that, if these notes are to be re-

turned by the receiver of the United States National Bank to the Olympia Bank & Trust Company it is equivalent to taking funds of the Olympia Bank & Trust Company to pay the private indebtedness of Messrs. Blakeslee, Weller, Reinhart, Shaffer, Hewitt and Howell, and is violating the principle of law enunciated in *Lamson vs. Beard, supra*.

SPECIFICATION OF ERROR NO. 4.

For reasons assigned and urged as to the other specifications of error, the court erred in cancelling the \$48,000 credit of which the \$36,550 set forth in appellant's complaint formed a part. In other words, the court required the return of the notes of the other stockholders of the Olympia Bank & Trust Company to the receiver of said company and held that the receiver could not recover for the \$36,550. In other words, the court sets aside the whole deal by which the Olympia Bank & Trust Company acquired the means upon which to do business. This, the court had no power to do, as we conceive under the evidence.

The court proceeded upon the theory that the whole transaction was fraudulent and that he would set aside the whole transaction by which these notes were given and the credit obtained. If the court had gone further, and had placed the parties back in statue quo, it could be urged that he did equity in the premises, but this the court did not do. By consulting plaintiff's exhibit 5 (p. 158, Transe. of the

Record), being a statement made by the receiver of the United States National Bank himself, it will be found that the total amount of the receipts of the United States National Bank from the Olympia Bank & Trust Company was \$101,498.91. Take from this the \$48,000 representing the credit obtained by the notes, will leave \$53,498.91. Take from this \$51,000 which appears on both sides of the statement, and which, as we have said before, is unexplained, and this leaves \$38,498.91. Add to this \$19,500, being \$10,000 for the amount due on account of money remitted to the State Bank of Tenino (and which does not show in this statement) and \$9,500 for the Blu-mauer notes (which do not appear in this statement) and we have \$57,998.91. Take from this \$12,500, which is the total amount of the remittances to the Olympia Bank & Trust Company and the payments of drafts by the United States National Bank, and we have a balance of \$45,498.91. As we have heretofore said, there can be no doubt but what appellant is entitled to the ten thousand dollars on the item for remittances to Tenino, but for the sake of argument we take this out and still it leaves \$35,498.91. This sum represents hard cash and money paid out; and there can be no contention but that the United States National Bank profited by reason of the organization of the Olympia Bank & Trust Company in said sum. The two items, one of \$12,500 and one of \$24,050, are not considered, being the two drafts, and involved in the \$48,000 transaction.

If the court is to place the parties back in statu

quo, as nearly as possible, to-wit: as nearly where they were before the Olympia Bank & Trust Company was organized, this sum—either the \$45,498.91, or the \$35,498.91, as the case may be—should be given back to the Olympia Bank & Trust Company, and this sum would be a preferred claim, because if the court is to wipe out the whole transaction as fraudulent, this last named amount represents money that was fraudulently filched from the people who organized the Olympia Bank & Trust Company, and would be the same as stolen money. The court cannot set aside this whole transaction without the organizers of the Olympia Bank & Trust Company are placed in statu quo as nearly as it is possible so to do. This is a fundamental rule and for the sake of refreshing our memories, we refer the court to the following citation from Cyc. and cases cited:

“The contract can only be rescinded where it is possible to put the parties back in their original condition and with their original rights. A contract voidable for fraud cannot be avoided when either party cannot be restored to his status quo, for a contract cannot be rescinded in part and stand good for the residue. If it cannot be rescinded in toto, it cannot be rescinded at all.” 9 Cyc. 437.

“It follows as a general rule that in order to rescind a contract for fraud, the party defrauded must restore or offer to restore the consideration which he has received under the contract.

That is, where a person has been induced by fraud to buy goods, in order to avoid the contract, upon the discovery of the fraud, he must return the goods; and if he does not, or cannot do so, he must pay the price, or at least the value of the goods. After consuming the goods wholly or in part the buyer cannot avoid the contract by which he obtained them, because he can no longer return them." 9 Cyc. 438.

Had there not been any Olympia Bank & Trust Company at all, and had it not been for the action of the United States National Bank through its active manager and vice-president, Mr. Gilchrist, in loaning Mr. Hays the money to organize the Olympia Bank & Trust Company the sum of money mentioned above would not have been obtained by the United States National Bank. This whole sum of money was obtained by the United States National Bank from the Olympia Bank & Trust Company through the manipulations by which the Olympia Bank & Trust Company was organized, and while, as we have heretofore said, we think the court has not the power to undo the legal obligations and relations running from the United States National Bank to the Olympia Bank & Trust Company, and consequently from the receiver of the United States National Bank to the receiver of the Olympia Bank & Trust Company, yet, if the court is to undo these relations, and set them aside, and hold them for naught, it must take the other alternative and place the parties as nearly in

statu quo as it is possible so to do—that is, place them back as nearly as possible where they were before.

SPECIFICATION OF ERROR NO. 5.

This specification needs but to be stated to emphasize the right of the appellant thereto. The money that was taken from the funds of the Olympia Bank & Trust Company to pay a private indebtedness of W. Dean Hays was like stolen money, and is therefore a preferred claim.

SPECIFICATION OF ERROR NO. 6.

As has been pointed out, the court only allowed the appellant a general claim of \$25,998.91, and no more. If the position taken by the appellant heretofore upon the several specifications of error is correct, the appellant is entitled to a claim of \$83,998.91 and the conclusion that the appellant is entitled to such sum necessarily flows from the presentation of the other assignments of error herein.

SPECIFICATION OF ERROR NO. 7.

The court, although the appellant prevailed to some extent in the court below, to-wit: to the extent of \$9,500, yet refused to allow appellant his costs. This seems to us erroneous and that the appellant was entitled to his costs.

The appellee has caused to be certified the decision of the honorable district judge on the denial of the

petition for re-hearing. This, of course, is the simple opinion of the court and does not amount to a finding, and no reference therein as to the testimony, except that shown in the transcript of the record, can be considered as a finding or as evidence in the case.

See the following:

Townsend v. Beatrice Cemetery Co., 70 C. C. A. 521.

Pacific Sheet Metal Works v. Californian Canners Co., 91 C. C. A. 108.

For the reasons urged hereinabove, we respectfully submit that the judgment of the lower court should be reversed, and judgment be rendered as directed by this court.

P. M. TROY,
Solicitor for Appellant.

STATEMENT OF THE CASE OF ROY A. LANGLEY, AS RECEIVER OF THE STATE BANK OF TENINO, VS. UNITED STATES NATIONAL BANK OF CENTRALIA, A CORPORATION, AND A. R. TITLOW, AS RECEIVER OF THE UNITED STATES NATIONAL BANK OF CENTRALIA.

It is alleged in the bill of complaint, not denied in the answer, and therefore admitted, and the undisputed evidence shows that the State Bank of Tenino and the United States National Bank of Centralia closed their doors on account of insolvency on the 21st day of September, 1914, and that for many years prior thereto said State Bank of Tenino and said United States National Bank of Centralia were doing business with each other and had mutual accounts and deposits, one with the other, and were so doing business up to the time of closing their said doors. (Transc. of Record, pp. 180, 182.) The bill of complaint further sets forth that the complainant has made a "careful examination of the books and accounts of both banks, and that there is now due and owing from said United States National Bank of Centralia to said State Bank of Tenino the sum of \$4,953.08, so far as complainant can determine from the investigation and information that plaintiff has been able to obtain." (Transc. of Record, p. 183.) This allegation was denied in defendant's answer. (Transc. of Record, p. 185.) The bill of complaint prayed:

1. For an accounting on behalf of said defendant.

2. That after the amount shall have been determined by such accounting due complainant by defendant, for a judgment allowing complainant's claim in the amount so determined.

3. For an order directing said Titlow, as receiver, as aforesaid, to pay complainant the amount of any and all dividends so declared.

4. For such other and further relief as to the court shall seem equitable and just.

5. For complainant's costs and disbursements herein. (Transe. of Record, p. 184.)

When this cause went to trial there were several items in dispute between the receiver of the State Bank of Tenino and the receiver of the United States National Bank of Centralia, but during the course of the trial the differences between the two receivers were ironed out except as to two items, one of which was a note of \$5,000.00 made by W. Dean Hays, payable to the United States National Bank, and the other consisted of what may be termed the Blumauer transaction with the Merchants' National Bank of Portland, consisting of four drafts, one in the sum of \$1,000.00 and the other three for \$500.00 each. (Transe. of Record, p. 141.)

NOTE OF W. DEAN HAYS FOR \$5,000.00.

Apparently the first negotiation in regard to the indebtedness, evidenced by this note, is a letter from

W. Dean Hays addressed to C. S. Gilchrist, vice president of the United States National Bank, under date of July 24, 1913. (Defendant's Exhibit B, Transc. of Record, p. 177.) It seems clear from this letter, and the testimony generally, that on that date W. Dean Hays personally owed the United States National Bank of Centralia \$2,000.00, evidenced by a promissory note in that sum, and that he was proposing to make a new note to the bank for \$5,000.00. Hays' offer was that \$2,000.00 of the \$5,000.00 should be used to retire the old note and the remaining \$3,000.00 should be carried on the books of the United States National Bank of Centralia as a special deposit to the credit of the State Bank of Tenino, against which the State Bank of Tenino would not draw. It seems equally clear that this arrangement was only partially carried out. The new note for \$5,000.00 (the note here in dispute) was in fact made by Hays and received by the United States National Bank. The old note for \$2,000.00 was cancelled and the remaining \$3,000.00 was placed to the general credit of the State Bank of Tenino in an open account existing between the two banks. No special deposit was made as suggested in Hays' letter. This money was drawn by Hays on drafts of the State Bank of Tenino on the United States National Bank and the \$3,000.00 thus drawn was used by Hays for his private purposes. The only persons who were familiar with this initial transaction called as witnesses at the trial were W. Dean Hays, the maker of the note and manager of the State Bank of Tenino,

to either June, 1914 (Transc. of Record, p. 67), or August, 1914 (Transc. of Record, p. 81) and C. S. Gilchrist, a director and vice president of the United States National Bank. (Transc. of Record, p. 114.)

Mr. Hays, on cross-examination by Mr. Owings, described this transaction as follows: That he had an obligation with the United States National for some little time prior to its insolvency in the sum of \$5,000.00, being a promissory note of the ordinary kind used by the bank and on the bank's own printed form and payable to the bank. (Transc. of Record, p. 77.) And again, on the cross-examination by Mr. Goodale, as follows: \$2,000.00 of the \$5,000.00 was applied to the payment of witness' personal and previously existing \$2,000.00 note which was in the United States National Bank and the remaining \$3,000.00 was placed on the books of the United States National Bank and of the books of the State Bank of Tenino to the credit of the State Bank of Tenino in the United States National Bank and to the debit of the United States National on the books of the State Bank of Tenino. Of course, the note was increased to \$5,000.00 and the remaining \$3,000.00, which was credited by the United States National to the Bank of Tenino was drawn by witness, not by the Tenino Bank, and was certainly used by witness. The United States National would simply credit the State Bank of Tenino with this remaining balance for witness' use and he would use it, and witness did use it. (Statement of Facts, p. 80.)

Mr. Gilchrist, on cross-examination by Mr. Owings, described this transaction as follows: "The \$5,000.00 note sent to us in the ordinary course of business with all of the notes that we took from the State Bank of Tenino was credited to the State Bank of Tenino and the \$5,000.00 went to the credit of the State Bank of Tenino. The original note, when it was sent down, came up from the State Bank of Tenino as ordinary paper rediscounted. It was sent down in the same manner as other notes we had taken. It came directly from the State Bank of Tenino to us for credit. The note was not signed or executed in Centralia. The original note was made six months prior to that. The exhibit is the original of the note. Witness is not sure if the first note had the Tenino State Bank's endorsement. It was drawn on their paper when it came down. We often took paper from them with the endorsement of the bank. It was drawn on their form. The Centralia bank's form was used because it was not unusual for witness, when a note was long overdue, and he had made a special effort to get a new note and get new paper into the bank, to make out a note himself and forward it and ask that it be executed and returned promptly. Witness has not stated that the State Bank of Tenino was an endorser on the note. Witness thought it was the note of the State Bank of Tenino the same as he did any other note he took from there, and he took a great many from them. There wasn't any signature of the State Bank of Tenino nor was there on other notes

that he got in the same manner. Witness supposed this was an obligation of the State Bank of Tenino as well as an obligation of W. Dean Hays. The \$5,000.00 was placed to the credit of the State Bank of Tenino and that was an open account that had existed for many years, and it fluctuated back and forth as the different transactions occurred. That is, an active, current, open account. There wasn't any special deposit of this \$3,000.00 in any way. It did not come in the form of a C. D. It didn't go into the open account or bank account of a different character in any respect than this open account, but it was clearly understood between Mr. Hays and witness for what purpose it was meant and was the special account meant when he said special account. (Transc. of Record, p. 120.)

It likewise seems clear that after the \$3,000.00 went to the credit of the State Bank of Tenino, and after Mr. Hays had appropriated \$3,000.00 thereof to his own use and expended it, that the United States National attempted on two occasions to charge the \$5,000.00 back to the State Bank of Tenino. The only witnesses who were familiar with different phases of these attempts were Hays, Gilchrist and Isaac Blumauer, the last named being manager of the State Bank of Tenino from either June or August, 1914, to the time of its failure, and president thereof from its organization to its failure.

Mr. Hays described that transaction as follows: It (the \$5,000.00 note) was returned by the United

States National to the State Bank of Tenino when witness was in the bank, and witness understood that it was returned afterwards and the account of the State Bank of Tenino was charged by the United States National with the \$5,000.00. The State Bank of Tenino refused payment on it and returned it to the United States National of Centralia with a statement of explanation that Mr. Gilchrist was going to buy witness' stock in the State Bank of Tenino and would take up that note and pay the difference and no liability was shown, or agreed to, by the State Bank of Tenino as a party or endorser or anything of that sort on that note, and if it was charged back again that was after witness left the active management of the State Bank of Tenino. (Transe. of Record, p. 77.)

Mr. Blumauer's testimony in this regard is as follows: The \$5,000.00 note of Mr. Hays, which is held by the United States National Bank, was brought to witness' attention when he was in the State Bank of Tenino acting in the capacity of president. The note came down from the United States National. It was enclosed with a statement showing that it was charged up to our bank at Tenino and Mr. Hays was away at that time. Witness laid it on his desk, wanting to ask Mr. Hays something about it because witness knew nothing about it. Witness did not want to give Centralia credit for it until he saw Mr. Hays and knew what the transaction was, and thinks then a few days after that when Mr. Hays did come to Tenino he took it up with him. Mr. Hays says it should

not have been sent to our bank at Tenino. It should have been kept down there, and that he would attend to the matter. Witness believes Mr. Hays returned it and it was sent up a second time because he knew when the bank closed that the \$5,000.00 note was on his desk and we didn't give Centralia credit for it because witness understood it was a private transaction between Mr. Hays and Mr. Gilchrist or between Mr. Hays and the United States National Bank. (Transc. of Record, p. 87.)

Mr. Gilchrist's testimony in regard to this transaction is as follows: That note was charged to their account, returned to Mr. Hays and he failed to credit it to our account, and we sent him our monthly statement and repeatedly asked him to send us an acknowledgment of the statement showing that the same was correct according to their books and that was not forthcoming, and finally he returned this note to us, asking as a special favor that we again credit the account and we did so temporarily covering a period of some two or three weeks, I should judge, when we again charged the note and sent it back to him. The note was forwarded by us in the ordinary course and sent back, and then we credited it back to Tenino; then we again sent it to Tenino and charged it to their account. He sent the note back for the purpose of getting his books in proper shape so that they would agree with ours anticipating a call from the bank examiner, and I wrote and told him we would be pleased to credit that draft so that he could get his books straightened up and checked up,

and as soon as that was done we immediately charged the note to his account and returned it to him. The general account that existed between the State Bank of Tenino and the United States National after the execution of this note was at times comparatively small and sometimes overdrawn, and after the execution of this note their books would show an overdraft of Tenino's account. There was deposited as collateral for this note some collateral of some coal company in Montana. Witness did not recall ever having received any stock in the State Bank of Tenino as collateral, but is not prepared to swear that he did not receive that as collateral. Could not positively testify that the stock in the coal company was issued to W. Dean Hays. (Transe. of Record, p. 122.)

According to the books of the United States National Bank the note was charged to the account of the State Bank of Tenino the first time on the 15th day of July, 1914, and was credited back on the 16th day of July, 1914. On the 24th day of July the State Bank of Tenino was again charged on the books of the United States National Bank with the \$5,000.00. (Transe. of Record, p. 142.)

No entry of this transaction ever was made on the books of the State Bank of Tenino. (Transe. of Record, p. 108.)

THE \$2,500.00 BLUMAUER-MERCHANT'S NATIONAL BANK OF PORTLAND TRANSACTION.

Isaac Blumauer lived at Tenino and Bucoda and

vicinity for thirty years, and was actively engaged all of the time in general merchandise and lumber and banking business. He had known Gilchrist, one of the original organizers of the United States National Bank, for twenty-five years. Gilchrist had been in the banking business in Centralia for probably twenty years and before that in Bucoda, and during all of that time Blumauer was a depositor with Gilchrist's banks. Gilchrist was very familiar with Blumauer's financial condition. (Transc. of Record, p. 86.) Prior to insolvency of the banks the Blumauer Lumber Company was indebted to the Merchant's National Bank of Portland in the sum of \$2,500.00. This indebtedness was evidenced by the company's promissory note. When this obligation matured the Portland bank demanded payment. The Blumauer Lumber Company, being without funds to meet the demand, and being indebted to the United States National \$30,000 or \$40,000, Blumauer took up with Gilchrist the matter of meeting the note of the Portland bank with the idea of protecting Blumauer's credit. (Transc. of Record, pp. 84, 122.)

The testimony of Blumauer on the one side and of Gilchrist on the other as to the arrangements for paying this \$2,500.00 note is, in certain essential particulars, irreconcilable. This far they seem to agree: that a draft for \$500.00 in partial payment should be at once sent to the Portland bank. This draft was to be drawn by the State Bank of Tenino on the United States National Bank in favor of the Portland bank. Similar banking transactions followed

from time to time so that the same kind of drafts were drawn and sent to the Portland bank. The second draft was for \$500.00, the third for \$500.00 and the last for \$1,000.00. The first draft was drawn while Hays was manager of the State Bank of Tenino.

Mr. Hays' testimony, as shown by the record, in regard to this, follows: Witness remembers that while he was cashier of the State Bank of Tenino a transaction where a draft was drawn by the State Bank of Tenino on the United States National in favor of the Merchant's National Bank in Portland for the purpose of paying a portion of the principal of the notes of Mr. Blumauer, of the Blumauer Lumber Company, or some of the concerns that Mr. Blumauer was interested in, as follows: Mr. Blumauer owed a note in Portland, had a letter from them stating that they wanted payment of five thousand dollars on it by a certain date, about three days following. I objected to loaning it out of the State Bank of Tenino funds, and he went down to see Mr. Gilchrist in Centralia, and after going there he called me up by telephone and told me he had made arrangements with Charlie Gilchrist for the money. He informed me that Mr. Gilchrist had requested that I send the United States National a draft stating for me to send a draft to Portland for five *thousand* dollars, and he would take care of it, which I did. There was an arrangement whereby the United States National was to really stand behind this draft. Never saw the draft after it was drawn and the same

was not entered up and made a charge in the books of the State Bank of Tenino. Witness thought it was sort of queer that that draft was sent up to us as a charge and returned it with a letter stating that it was his understanding that that was not to be charged to us, and it was taken back by the Centralia bank. Has never seen the draft since and does not know where it is. (Transc. of Record, pp. 97, 98.)

Mr. Blumauer's testimony, as shown by the record in regard to these four drafts, follows: Referring to the note of one of the companies in which witness was interested, payable to the order of the Merchant's National Bank of Portland, on two or three occasions payments were to be made and the Blumauer Lumber Company was not able to meet them, and taking the matter up with the United States National Bank, Mr. Gilchrist in particular, witness spoke to him about it and he told witness that he should issue drafts on the United States National Bank of Centralia and he would take care of them. The note of the Blumauer Company in the United States National, witness thinks, was twenty-five hundred dollars, and thinks the payments were made three five-hundred dollar payments and one of one thousand dollars. The bank in Portland insisted upon having the money and agreed to take payments of five hundred dollars each, three five hundred-dollar payments, and the balance, the fourth payment, a thousand dollars. These payments were to be made thirty, sixty days apart. It being without money, witness took it up with Mr. Gilchrist, of the

United States National Bank. He not wanting to extend us any further loans on account of not wishing to make excessive loans to the Blumauer Lumber Company wanted to handle it in that way so that the Tenino bank would issue the draft, and he would take care of it, and it would not appear as a note of the Blumauer Lumber Company. At this time the Blumauer Lumber Company was indebted to the United States National to such an extent that any more loans would have been considered excessive loans. The indebtedness may have been thirty or forty thousand dollars. Somewhere in that neighborhood. There was other paper—the Blumauer Logging Company. Mr. Gilchrist said he would take care of this loan. Witness' first talk was with Mr. Gilchrist in regard to it. And witness wanted to get a draft of five hundred dollars down to Portland in a hurry and did not wait till he could talk to Tenino, and thus he telephoned to Mr. Hays, and is under the impression that he told Mr. Hays to execute the draft to Portland so it would get away in the first mail, and telephoned him to do so and explained matters over the telephone. The other three drafts, witness thinks, were executed by him as president of the Tenino State Bank. Witness' understanding with Mr. Gilchrist was that as far as the bank of Tenino was concerned they would not be interested only that I should issue the draft on the Tenino bank and send it to Portland, and it was merely a matter between the Blumauer Lumber Company and the United States National Bank in Centralia, and wit-

ness believed that the drafts were just to be held in Centralia as a cash item against the Blumauer Lumber Company. The Tenino bank made no record of it at all, because after witness sent the drafts away that was all there was to it. No record was made of it. As near as witness could recall there was no record in the Tenino bank that those drafts were sent. (Transe. of Record, pp. 84, 86.)

Mr. Gilchrist's testimony, as shown by the record in regard to these four drafts, follows: Did not recall that Hays and Blumauer and himself were all together at a conference in regard to taking care of the obligations of the Blumauer Company in the transaction between the Tenino bank and the United States National and the Merchant's National in Portland, but thinks it was discussed by each of them at different times. Mr. Blumauer was a heavy debtor of the United States National at that time, and we were carrying them to quite an extent, and witness felt at that time that he desired to protect Mr. Blumauer's credit just as well as he could. Mr. Blumauer stated that the Tenino State Bank was not in a position to take this paper up. The plan was proposed that Tenino was to draw its usual drafts on the United States National, payable to the Merchant's National, and when that was returned to the United States National that they would carry it, and when these drafts were presented in the ordinary manner that we would protect the drafts, notwithstanding their account was overdrawn. As far as the Blumauer Lumber Company was concerned and so far as

Mr. Blumauer was concerned, witness supposed it was their intention to make their arrangements with the State Bank of Tenino covering this draft, and then in turn for the State Bank of Tenino to have us carry it for them, but it was never done. It was witness' idea of the plan that was agreed upon that when the drafts came back from Portland that it would be charged to Tenino's account. The drafts were to be sent by me to Tenino in the ordinary course of business, go back at the end of the month. The drafts went back to Tenino cancelled and returned with a statement at the end of the month. Our statements show the drafts and cancelled vouchers returned. Did not know, as a matter of fact they were found with the paper and files of the United States National Bank. The statement showed these particular drafts were returned. Could not testify as to whether any of the statements he sent down showing this transaction was accepted by Tenino. (Transc. of Record, pp. 122, 123.)

**SPECIFICATIONS OF ERRORS IN THE CASE
OF ROY A. LANGLEY, AS RECEIVER OF
THE STATE BANK OF TENINO, VS.
UNITED STATES NATIONAL BANK OF
CENTRALIA, A CORPORATION, AND A. R.
TITLOW, AS RECEIVER OF THE UNITED
STATES NATIONAL BANK OF CEN-
TRALIA.**

1. The lower court erred in denying with prejudice the claim of complainant of the four drafts of

the State Bank of Tenino upon the United States National Bank aggregating the sum of \$2,500.00. (Transec. of Record, p. 186.)

2. The court erred in denying with prejudice the claim of complainant on account of the certain note of W. Dean Hays in the sum of \$5,000.00 charged to the State Bank of Tenino by the United States National Bank of Centralia. (Transec. of Record, p. 186.)

3. The court erred in holding and adjudging said note a good, valid and proper charge on the part of the United States National Bank of Centralia against the State Bank of Tenino and its receiver. (Transec. of Record, p. 186.)

4. The court erred when it allowed complainant a general claim against defendant as receiver in the sum of \$5,511.13, in that it refused to allow complainant \$2,500.00 in addition thereto, on account of the drafts mentioned in specification 1. (Transec. of Record, p. 186.)

5. The court erred when it allowed complainant a general claim against defendant as receiver in the sum of \$5,511.13, in that it refused to allow complainant the \$5,000.00 in addition thereto, on account of the note mentioned in specification 2. (Transec. of Record, p. 186.)

ARGUMENT OF THE CASE OF ROY A. LANGLEY,
AS RECEIVER OF THE STATE
BANK OF TENINO, VS. UNITED STATES

NATIONAL BANK OF CENTRALIA, A CORPORATION, AND A. R. TITLOW, AS RECEIVER OF THE UNITED STATES NATIONAL BANK OF CENTRALIA.

Specifications of errors Numbers 1 and 4 cover the same subject matter and will be discussed together, with the court's permission. They are both predicated on the decree of the lower court. (Transe. of Record, p. 186), and both pertain to the same point mentioned in the decree in different ways. In Paragraph 1, of the Decree, the claim of appellant "on account of certain drafts of the State Bank of Tenino upon United States National Bank aggregating the sum of \$2,500.00" is denied with prejudice. In Paragraph 3, of the Decree, the lower court allows the appellant a general claim against the appellee in the sum of \$5,511.13, and no more. Obviously, if the court committed error in denying appellant's said claim for \$2,500.00, it committed error in not increasing by that amount the general claim it did allow.

The "Statement," *supra*, under the caption "The \$2,500.00 Blumauer-Merchant's National Bank of Portland" covers these two specifications.

Appellant contends (1) that there is no evidence to support those portions of the decree and (2) if there is any such evidence, the evidence to the contrary overwhelmingly preponderates in appellant's favor, so that this court in considering the same will be clearly convinced that the lower court was in error in denying this claim.

This case being before this court on appeal from a decree entered in an equitable suit, questions of fact as well as law, will be reviewed.

Appellant claims, with confidence, that there is no testimony of any kind, character or description, to justify the court's determination in this record, unless the testimony of Mr. Gilchrist (Transe. of Record, pp. 122, 123) and the drafts themselves do so. At the time Gilchrist gave his testimony he was serving sentence in the United States Penitentiary at McNeil's Island for the commission of a crime connected with the affairs of the United States National Bank. (Transe. of Record, p. 133.) The salient part of his version of these transactions (set out fully in the "Statement" herein) is that actuated by desire to protect Blumauer's credit and being informed by Blumauer that the Tenino bank was not in a position to take this paper up, the plan was proposed that Tenino was to draw its usual drafts on the United States National payable to the Merchant's National and when that (the drafts) was returned to the United States National, that bank would pay them notwithstanding their (Tenino's) account was overdrawn. (Transe. of Record p. 122.) Accepting this statement as a verity, would such transaction, as a matter of law, relieve the United States National from liability and fasten such liability on the State Bank of Tenino? If this question is answered in the affirmative, then there is evidence to support the decree as to these transactions, and the first subdivision of our contention is erroneous. We submit,

however, that this question should be answered in the negative. The plan, as described by Gilchrist, was conceived in fraud. The ultimate result from such plan was that Blumauer to meet a due obligation should receive the money from the United States National and then the United States National should get the money back from the State Bank of Tenino. Gilchrist knew that the State Bank of Tenino was without funds to make this loan. He was anxious to protect Blumauer's credit because Gilchrist's bank was carrying Blumauer for from thirty to forty thousand dollars. If Blumauer could not meet his obligations thirty or forty thousand dollars of his paper held by the United States National would have to be charged off its books. In view of the bank's subsequent failure, is it not fair to assume that if this amount of assets were in fact charged off, the bank would have failed? Thus the vital interest of Gilchrist is shown. Remember, this was a new transaction and a new additional credit, for Blumauer was to be established. The Tenino Bank did not have the money. Gilchrist's bank did. Under these facts a legitimate consummation of the deal would have been for Blumauer to make a note for the \$2,500.00 to the United States National and to remit the money to the Portland bank. Of course, this was undesirable from Gilchrists' viewpoint, because the bank examiner's attention would be directed to the additional loan of \$2,500.00 and that fact, considered with the further fact that Blumauer had other obligations to the bank in an excessive amount, would

undoubtedly cause trouble with the bank examiner. Such a transaction would of necessity have to appear on the books of the United States National as a loan. On the other hand, if the officers of the State Bank of Tenino could be induced to draw a draft of that institution on the United States National in favor of the Portland bank, then, so far as the bookkeeping record of Gilchrist's bank was concerned, no loan need be shown. On a call from the bank examiner, or the comptroller, Gilchrist could, if it became advisable, charge the returned drafts to Tenino's account, as he attempted to do, or could carry the transaction as a cash item and the examiner, or comptroller, would not be informed of an additional loan to one who was already an excessive borrower from the bank.

It is true that the drafts themselves would, standing alone, corroborate the plan testified to by Gilchrist. The State Bank of Tenino, as the drawer of the drafts, would be liable to the drawee, the United States National Bank, but the transaction established by these drafts are in no wise inconsistent with the plan as testified to by Blumauer, and therefore their corroborative force is destroyed.

Circumstances just as consistent with honesty and good faith as with a fraudulent intent are insufficient to prove fraud. *In re Hawks*, 204 Fed. 309, 213 Fed. 177.

Let us now discuss our second contention. There can, it seems to us, be no doubt in the court's mind

in considering this evidence that Blumauer's version is the truthful one. That is, after paying the Portland bank, his obligation was to the United States National, not to the Tenino bank, and that the United States National would take care of the indebtedness. This is proved beyond doubt by the uncontradicted proof that the Tenino bank did not have the \$2,500.00 to loan Blumauer. If it had the money there was no earthly reason for conferring with Gilchrist in regard to the transaction. Blumauer could have borrowed the money from Tenino and remitted it to Portland, and the transaction would have been completed. Why should Blumauer have taken the matter up with Gilchrist. The necessity therefor was the lack of money of the Tenino bank. Blumauer says so. Hays says so. Gilchrist says that Blumauer told him so. In those transactions, did the Tenino bank receive any consideration or any benefit of any kind from this transaction sufficient to support a contractual liability? Certainly not! Did the United States National receive any such consideration or benefit? It certainly did! What was it? The payment of a pressing matured debt of a customer who was an excessive borrower from it, the impairment of whose credit would jeopardize thirty or forty thousand dollars of that customer's paper held by the bank. It must be remembered that this is a suit for an accounting between two receivers, trustees of their respective trusts, and the onus of these transactions must fall upon the depositors of one institution or the other. We submit that the equities are

with the appellant's trust as to these draft transactions and that the loss resulting therefrom should fall upon the appellee.

The principles of law here asserted are so elementary as to need no citation of authority. The vitiating effect of fraud is, of course, fundamental and has been recently recognized by this court.

Platten vs. Gedney, 221 Fed., 281, Reversed
224 Fed. 382, 140 C. C. A. 68, Amended 228
Fed. 338, 142 C. C. A. 630.

A court of equity will not aid parties in the consummation or perpetration of a fraud.

Erhardt vs. Boaro, 8 Fed. 692.

Farley vs. St. Paul M. & M. Ry. Co., 14 Fed.
114, and *Farley vs. Kittson*, 120 U. S. 303,
7 Sup. Ct. R. 534, 30 L. Ed. 684.

That fraud may not be presumed does not imply that it may not be proven by circumstances since it may be apparent from the intrinsic nature and subject of the transaction itself.

Lumpkin vs. Foley, 204 Fed. 372, 122 C. C. A.
542.

Direct evidence is not necessary to prove fraud providing the circumstances relied on are convincing.

In re Hawks, supra.

Specifications of Error Numbers 2, 3 and 5 cover the same subject matter and will be discussed together. They are predicated on the decree of the

lower court (Transc. of Record p. 186) and each pertain to the same point mentioned in the decree in three different ways. In paragraph 2 of the decree the claim of appellant "on account of the certain note of W. Dean Hays, in the sum of \$5,000, heretofore charged to the State Bank of Tenino by the United States National Bank of Centralia" is denied with prejudice. In the same paragraph "said note is held and adjudged to be a good, valid and proper charge on the part of the United States National Bank of Centralia against the State Bank of Tenino and its receiver." The denial of appellant's claim and adjudging the note a valid charge against appellant is stating the same thing in different ways. In paragraph 3 of the decree the lower court allows the appellant a general claim against the appellee in the sum of \$5,511.13, and no more. If the two actions of the lower court were erroneous, it follows as a matter of course that it was error not to increase appellant's general claim allowed in paragraph 3 of the decree by \$5,000.00, the amount of this note.

The "Statement," *supra*, under the caption, "Note of W. Dean Hays for \$5,000.00," covers these three specifications.

Appellant contends that there is not a particle of evidence anywhere in the record to support the action of the lower court in charging this note to the State Bank of Tenino. Hays gave his note to the United States National for \$5,000.00. In a letter asking for this loan (Transc. of Record p. 177) Hays proposed a disposition of the proceeds, viz: \$2,000.00

to retire a previously existing note of his to the United States National and the remaining \$3,000.00 to be kept in the United States National as a *special deposit* to the credit of the State Bank of Tenino. What actually happened was, the \$2,000.00 took up the old note, but the \$3,000.00 was placed to the *general credit* of the State Bank of Tenino in an open account. This account had existed for many years, fluctuated back and forth as different transactions between the two institutions occurred (Transc. of Record p. 120) and after the execution of the note was at times comparatively small and sometimes overdrawn. (Transc. of Record p. 122.) It would seem idle to go further to meet any possible contention of counsel on the other side that a *special deposit* was created. We frankly concede that if the \$3,000 had been made a special deposit to the credit of the State Bank of Tenino by the United States National Bank as suggested in Hays' letter asking the loan, evidenced by a certificate of deposit, or any other appropriate instrument, then to that extent but no more, the United States National could successfully make its claim so evidenced against the appellant. But when the \$3,000 was placed to the general credit of the Tenino Bank, it could be drawn by it for any purpose on demand. It was so drawn by the Tenino bank for Hays' own private purposes. (Transc. of Record, p. 80.) There was nothing out of the ordinary in such a transaction. (Transc. of Record, p. 144.) When this is coupled with the fact that the United States National permitted the Tenino bank

to reduce this general account less than \$3,000, and even overdraw the same, as shown by Gilchrist's testimony, there is no basis whatsoever to make any claim that this \$3,000, or any part thereof, constituted a special deposit. Indeed the lower court could not have been controlled by this in its determination of this item because if it had been it would have fixed the amount thereof in the sum of \$3,000, while as a matter of fact the amount of the whole note, to-wit: \$5,000.00 was charged to appellant by the court. Mr. Gilchrist indulges in some conclusions to the effect that he thought that this note was the note of the State Bank of Tenino and that he supposed it the obligation of the State Bank of Tenino as well as an obligation of W. Dean Hays. But in the very same breath he admits that the State Bank of Tenino was not an endorser and that there was no signature of the State Bank of Tenino on the note. The idea that a banker of twenty-five years' experience, in the absence of some other express agreement, would conclude that this was the note of the State Bank of Tenino or suppose the note was the Tenino bank's obligation, without its endorsement or signature thereon, is so preposterous that we feel sure that it was not the ground of the lower court's ruling, and if it was will not be so considered by this court. About the only office that such conclusions could perform would be to demonstrate that the witness, when testifying, was as careless in his conclusions as he was in handling his depositor's funds. He is paying the penalty the law imposes for the lat-

ter. The former should not be made the basis for an unjust recovery. We are frank to say to the court, that we do not believe the lower court gave these conclusions any consideration whatever. We believe the lower court went wrong on the supposition that there was an agreement made between the two banks fixing a liability on the Tenino bank on account of this note by reason of the acts of the parties in July, 1914. (Transe. of Record, p. 122.)

Having, as we believe, conclusively demonstrated that the Hays' note was owned by the Centralia bank, without any liability thereon on the part of the Tenino bank, prior to July 15, 1914, when the Centralia bank, through the machinations of Gilchrist, first attempted to foist this worthless paper off onto the State Bank of Tenino, we will now discuss the testimony with reference to that attempt. If that attempt was legally consummated the lower court's ruling was right. Otherwise, appellant is entitled to judgment in the sum of \$5,000 in addition to the amount allowed. We have just referred to this Hays paper of \$5,000.00 as "worthless." This statement is wholly justified beyond cavil. We believe a casual reading of the record will convince the court that Gilchrist found it out not later than about July 15, 1914. Is it not a fair deduction to say that Gilchrist's view was about this: My bank has \$5,000 of worthless paper from Hays, it has an active, open account with the Tenino bank that is a present liability, if I can reduce that liability to the extent of \$5,000 with this worthless paper my bank is gainer

to that extent, I can surely induce the Tenino bank to accept this because the maker of this worthless paper is the manager of the Tenino bank and as such manager, he will not turn down his own paper? We commend his logic, but not his morals. When his plan was put in operation it failed. Hays says so. (Transc. of Record, p. 77.) Gilchrist admits it. (Transc. of Record, p. 122.) Of course, no one knew better than Hays the worthless character of his own paper and he saw no reason for taking the risks of the penitentiary, with no resultant benefit to him. By that time he and Gilchrist were so intimately involved each with the other in the scheme of organizing and opening the odious Olympia Bank & Trust Company, that he had nothing to fear from Gilchrist. The buying for a bank by one of its officers of the private worthless paper of that officer is often attended with uncomfortable consequence to the purchaser. But Gilchrist was persistent and when Hays went to Olympia and Blumauer became the active manager of the Tenino bank, he again charged Tenino's account with the item and sent the note to the Tenino bank. Again, looking at this matter from Gilchrist's viewpoint, is it not fair to assume that he thought about as follows: Hays would not take this \$5,000 of worthless paper off my hands while he was managing the affairs of the Tenino bank, but Hays having been succeeded by Blumauer, who is under heavy financial obligations to my bank will certainly do so? But Blumauer refused. Right here is the whole crux of this \$5,000 transaction. The

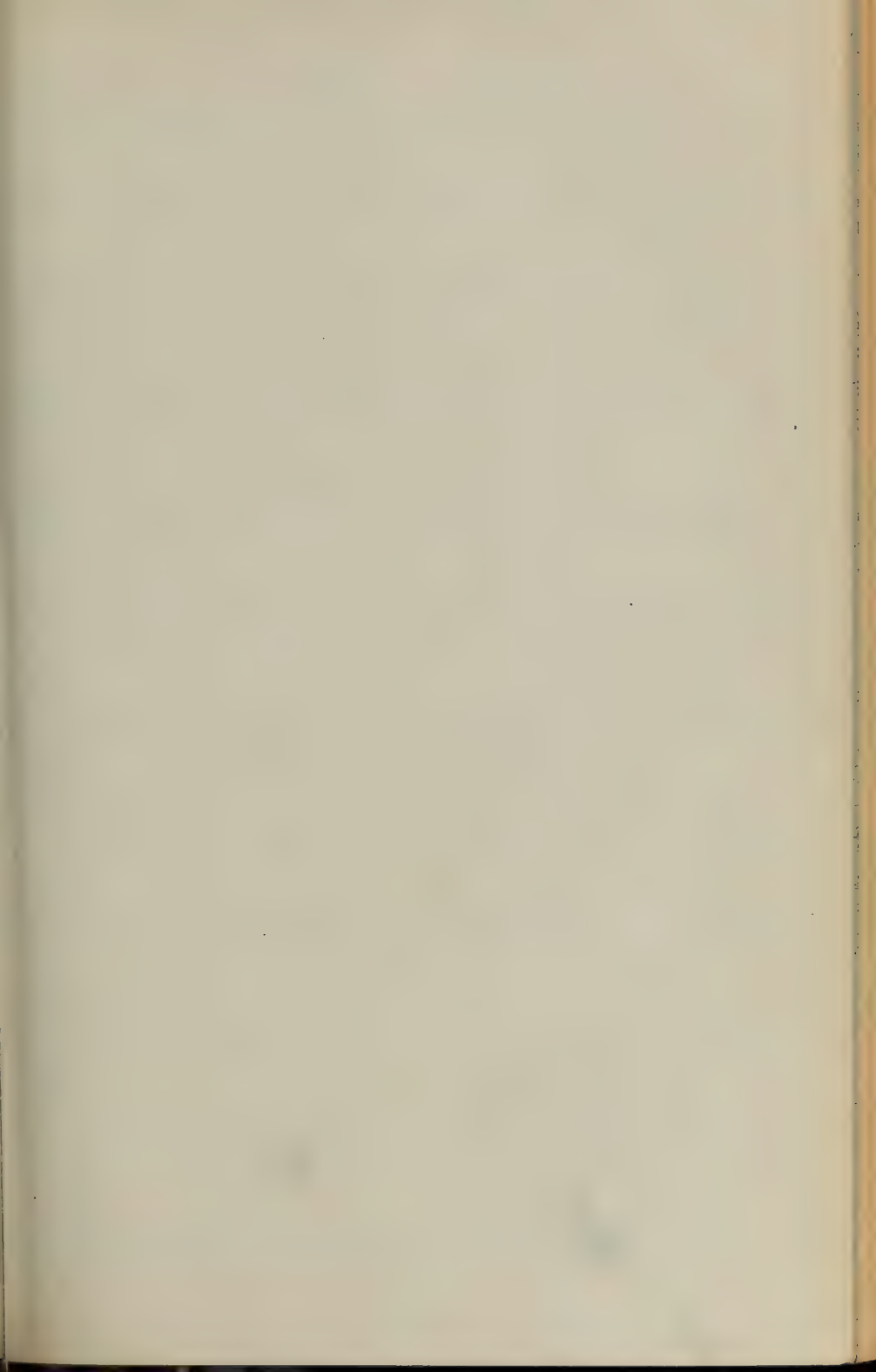
record will be searched in vain for any testimony showing an acceptance of the sale of this note by anyone authorized to act for the Tenino bank. Nowhere does Gilchrist make any such claim. But there is testimony directly to the contrary by Blu-mauer. He consulted with Hays and Hays told him it should not have been sent to the Tenino bank, and that Hays would attend to the matter. The Centralia Bank was not given credit for it because Blu-mauer understood that it was a private transaction between Mr. Hays and Mr. Gilchrist or between Mr. Hays and the United States National Bank. (Transe. of Record, p. 87.) It is very significant that the Tenino bank's books showed no such entry. (Transe. of Record, p. 108.)

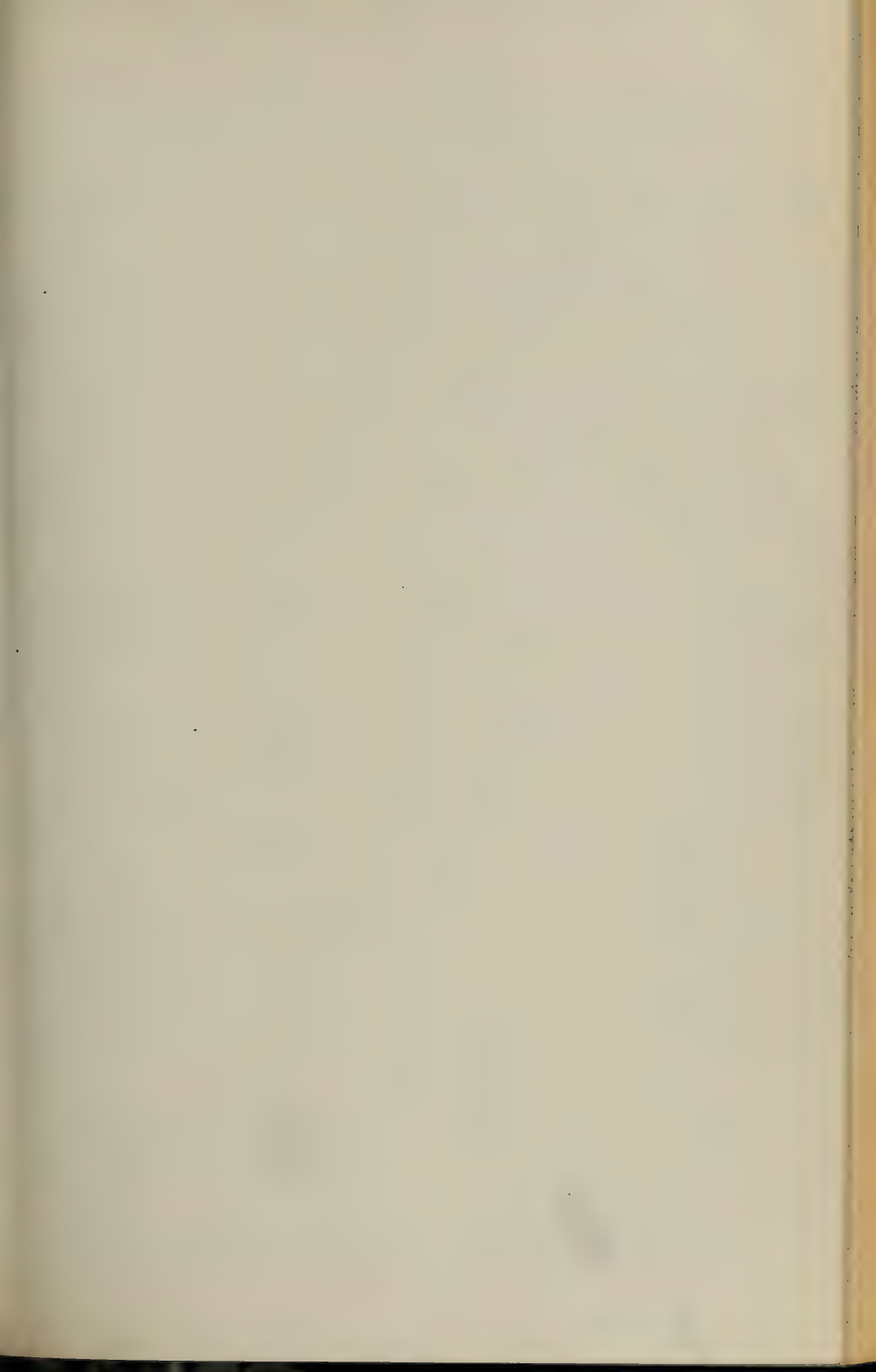
Appellee should not have been given credit for this note, first, because there is no evidence whatsoever showing an acceptance by the State Bank of Tenino of the offer of sale, and secondly, because in so doing the court would be consummating a fraudulent scheme, concocted by Gilchrist, to swindle the State Bank of Tenino out of \$5,000.00.

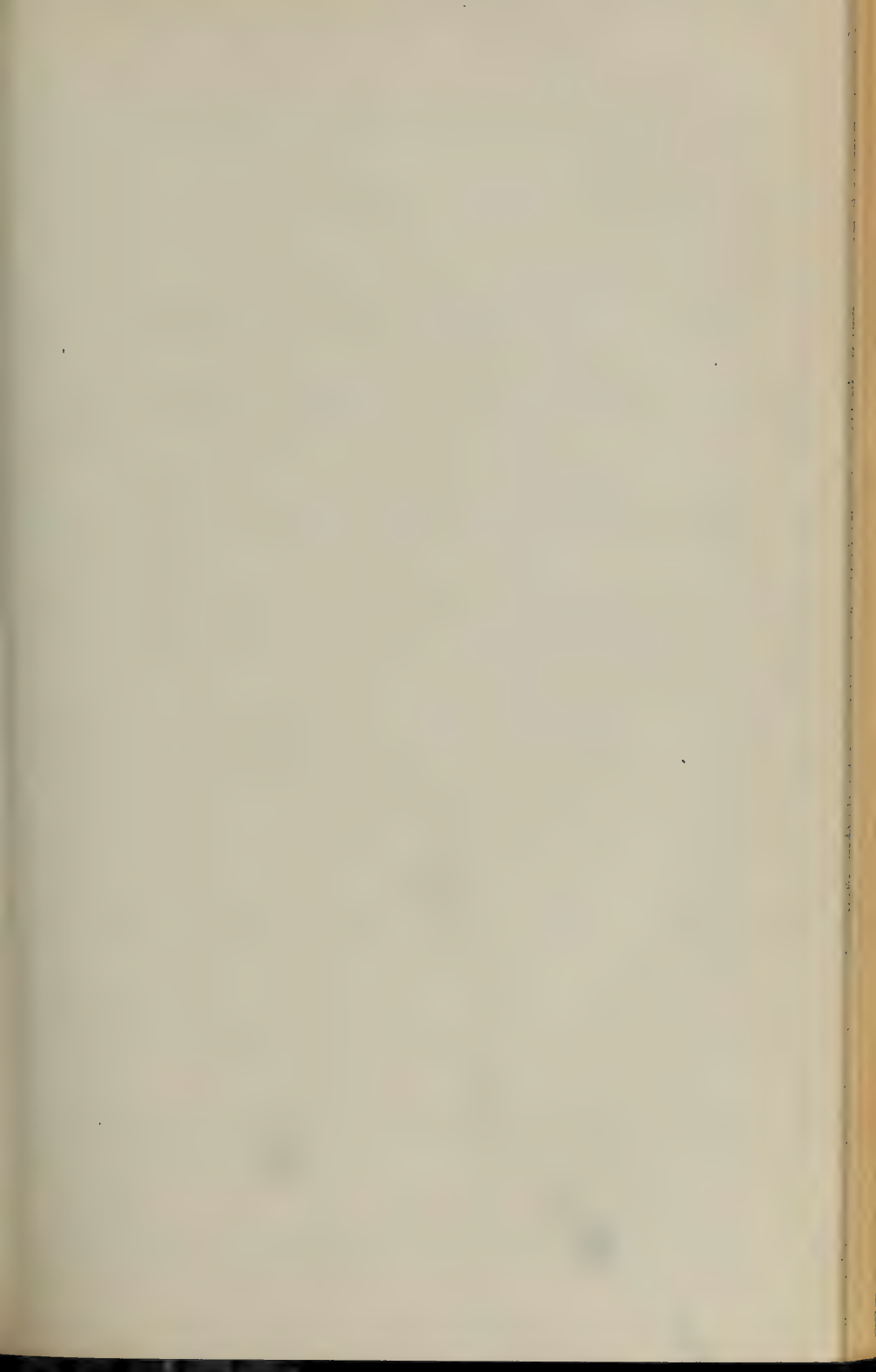
In conclusion, we confidently urge this court to reverse the lower court and direct the entry of a decree allowing appellant a general claim against the appellee for \$2,500.00 and \$5,000 in addition to the amount already allowed in the sum of \$5,511.13.

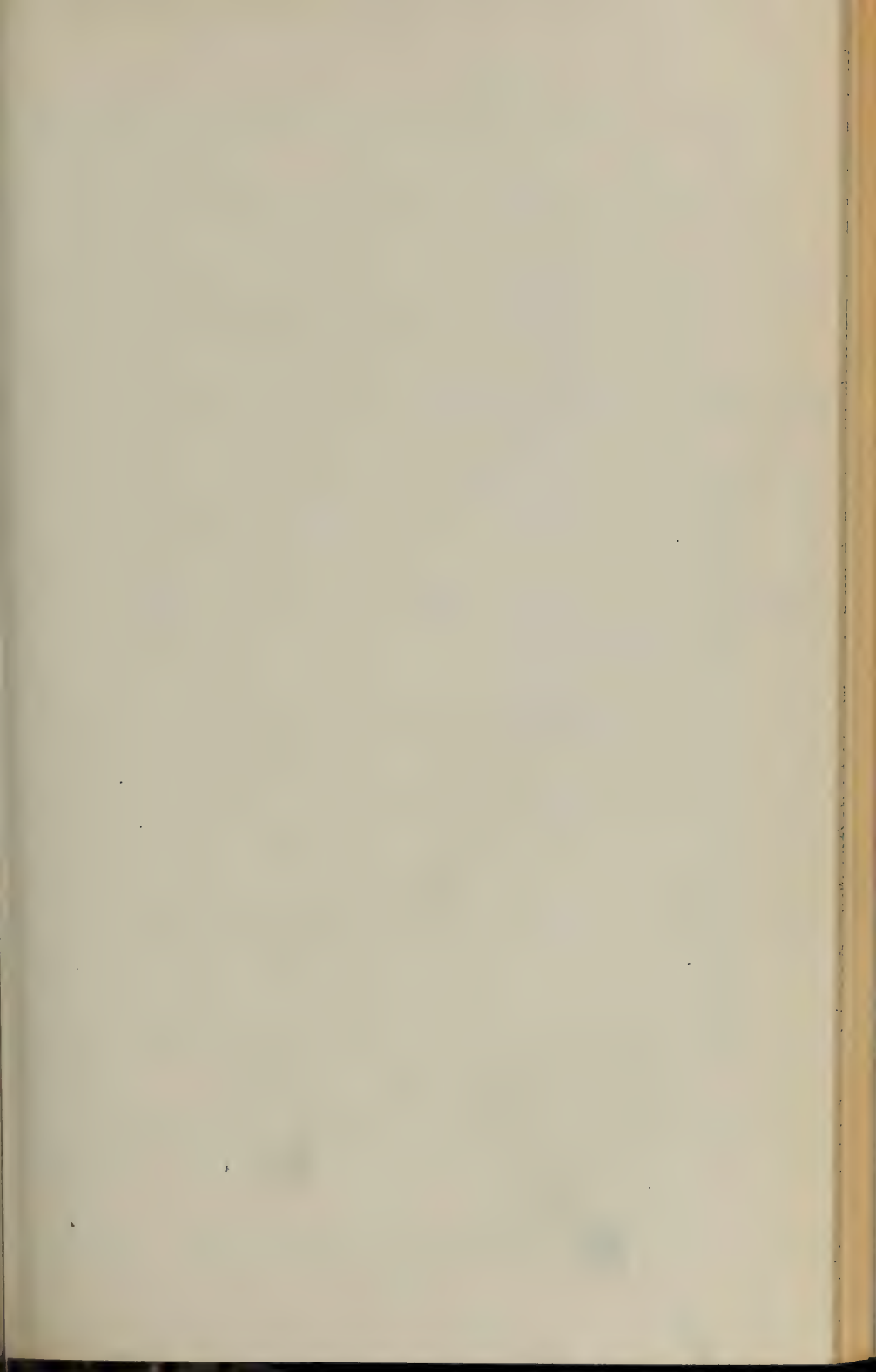
Respectfully submitted,

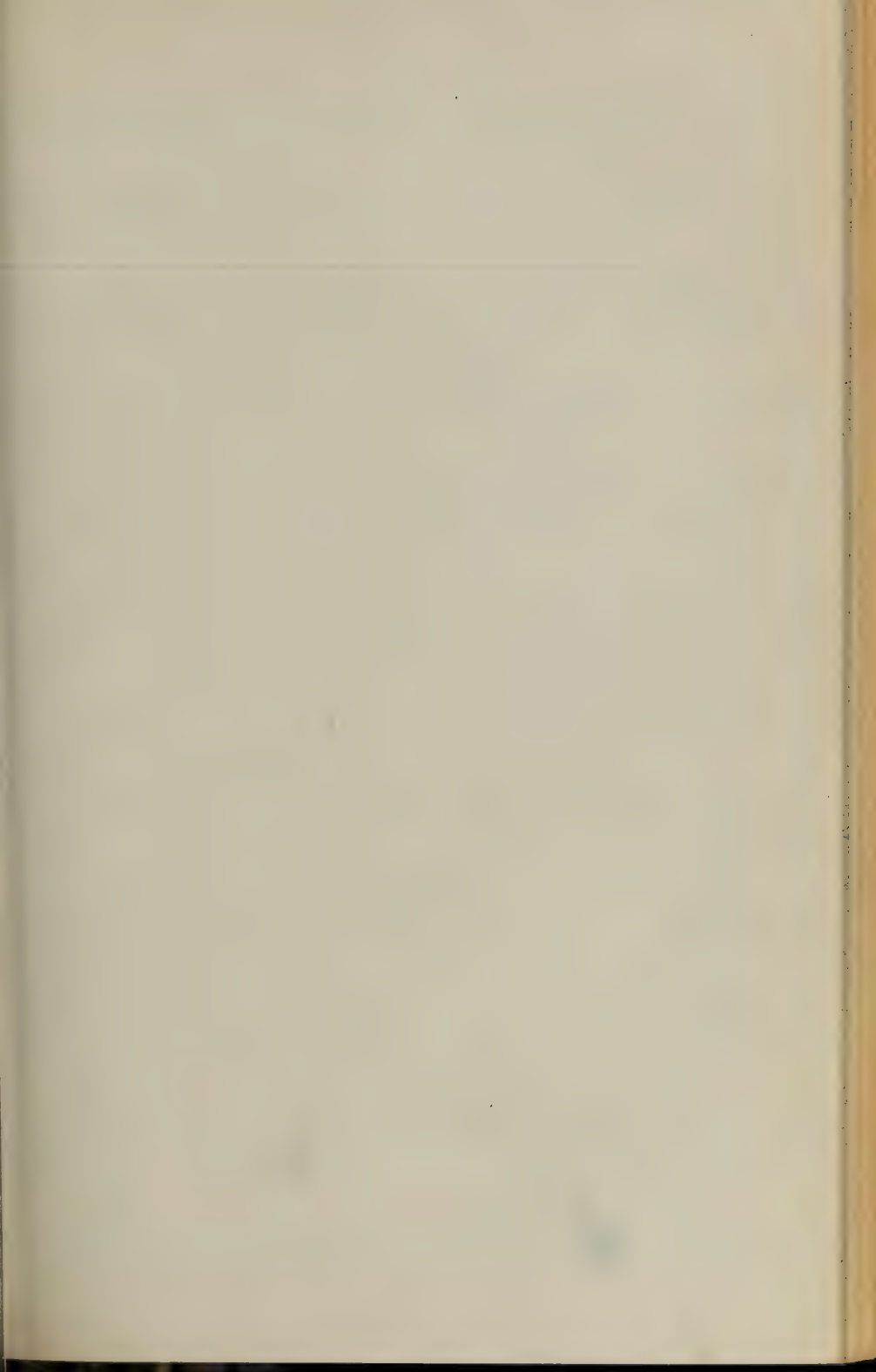
FRANK C. OWINGS,
Solicitor for Appellant

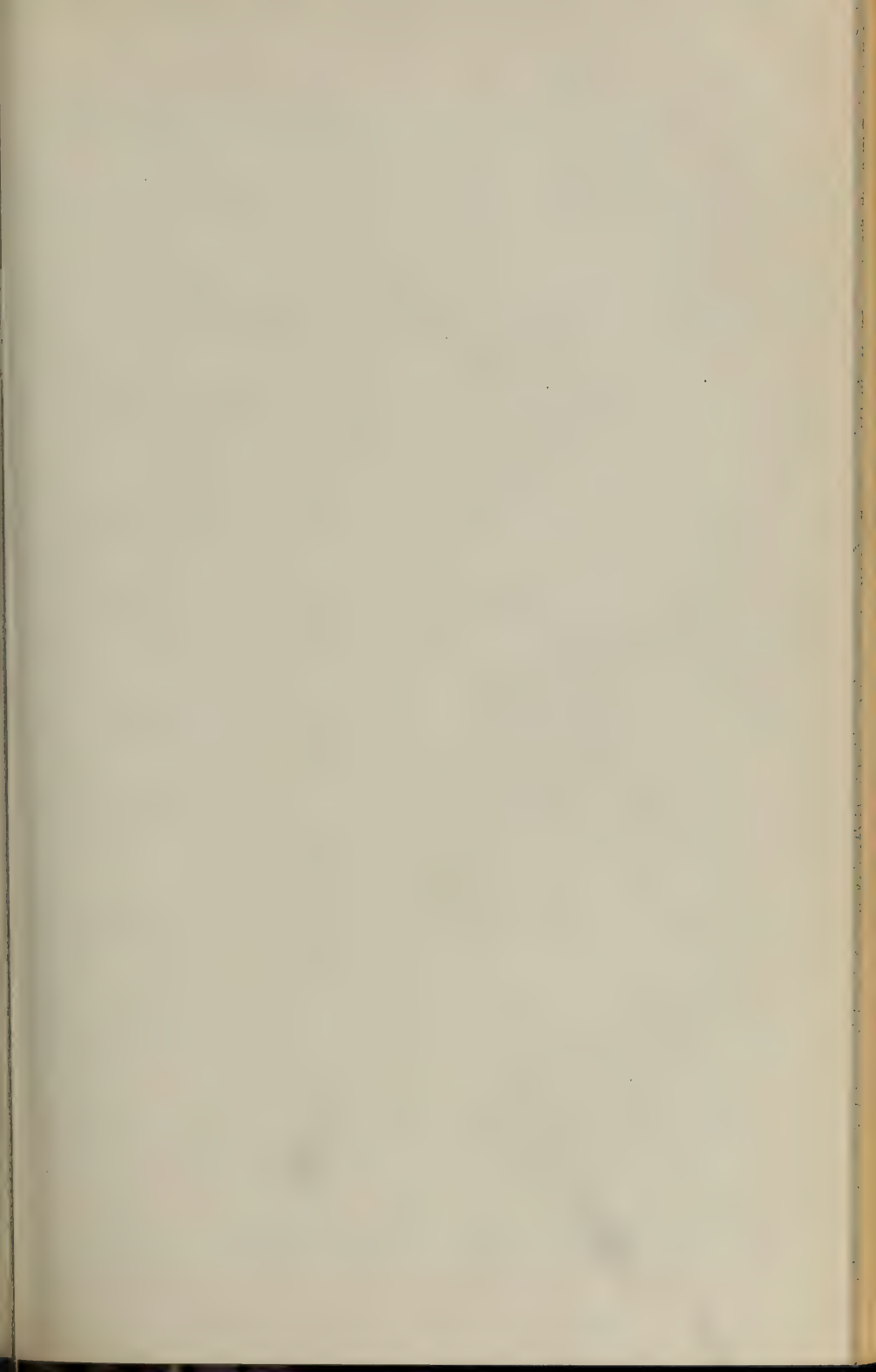




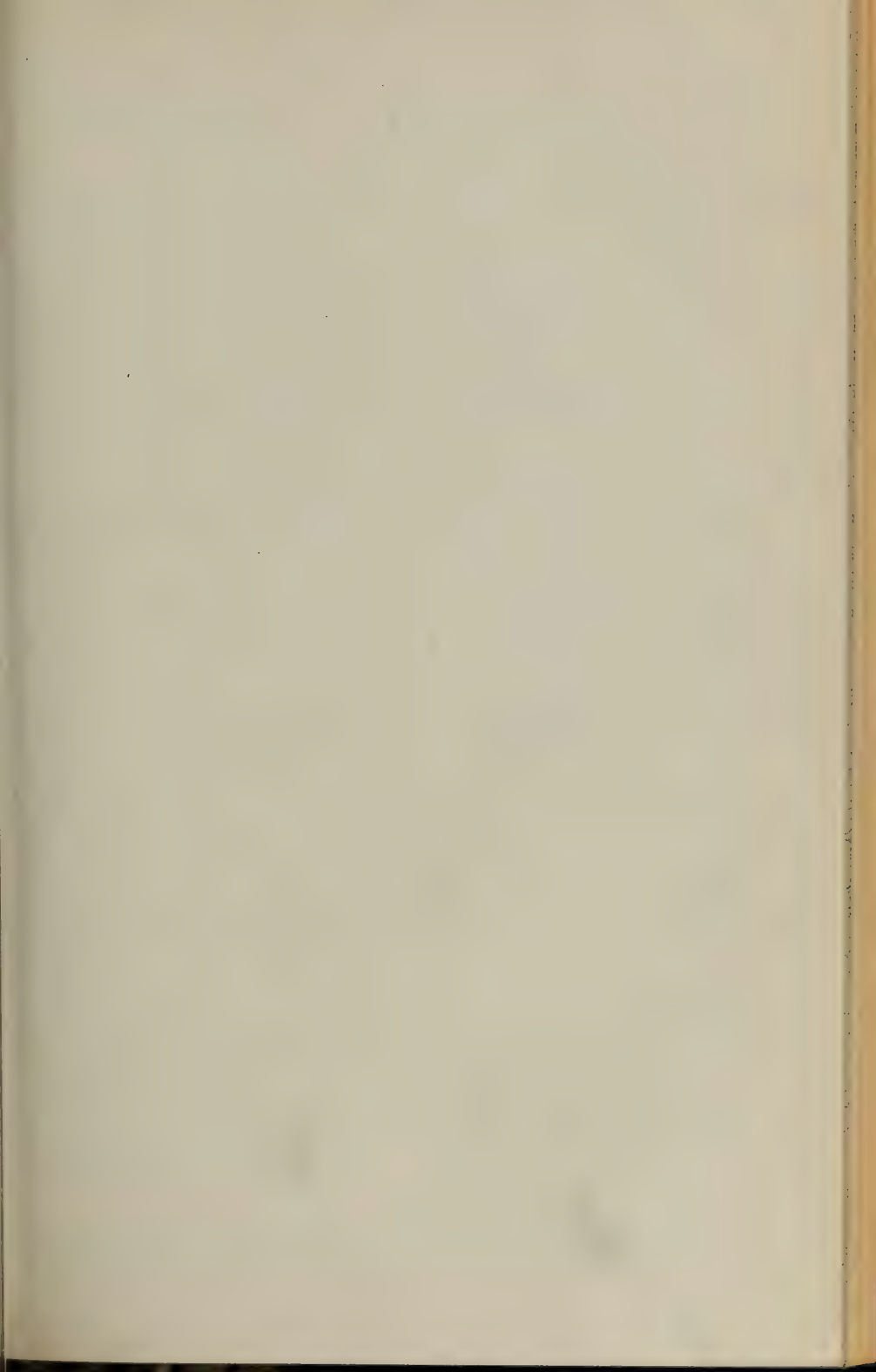


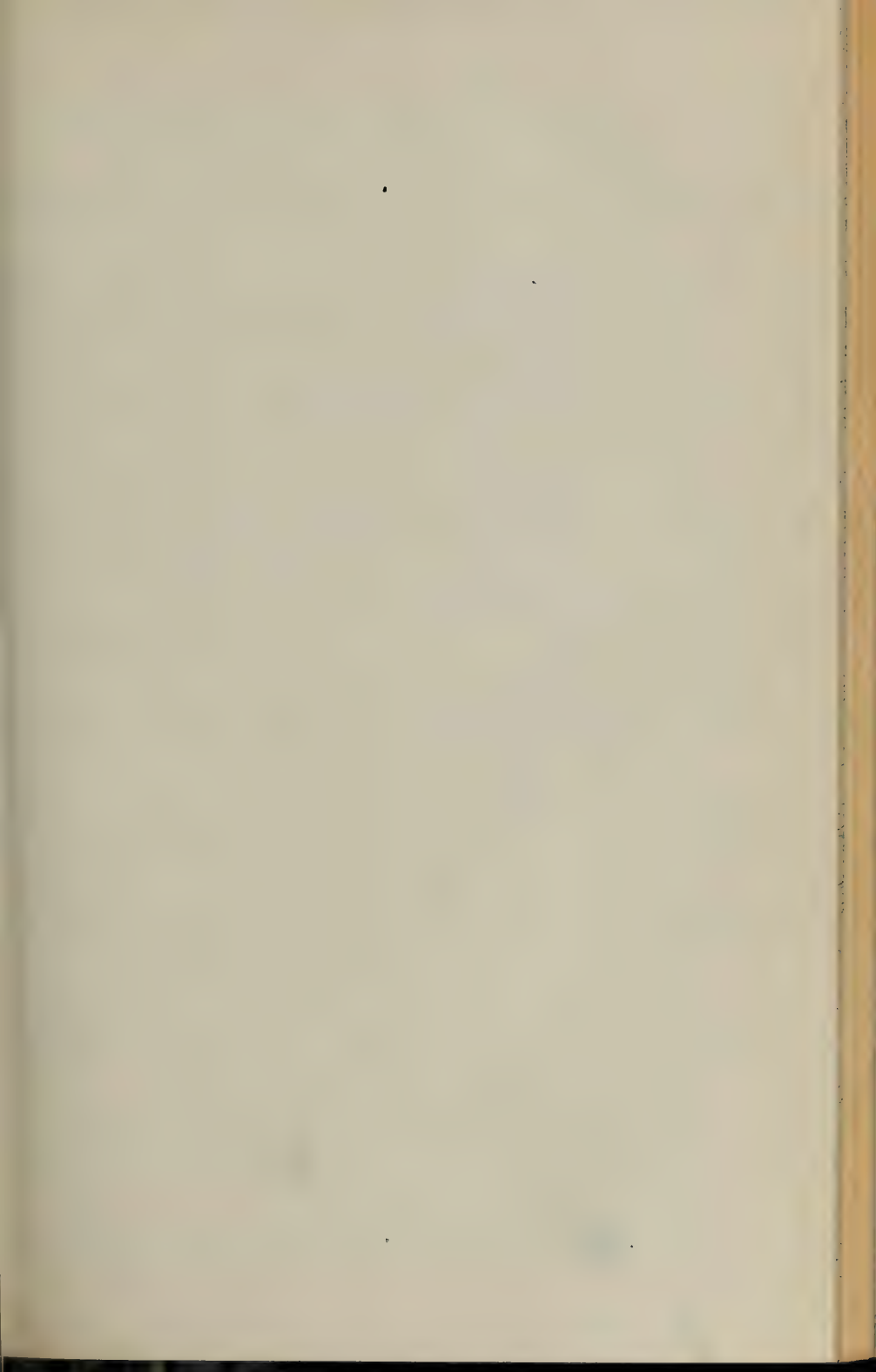












IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

FRANK P. MCKINNEY, as Receiver of the OLYMPIA BANK &
TRUST COMPANY, a Corporation,

Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corpora-
tion, and A. R. TITLOW, as Receiver of the UNITED STATES
NATIONAL BANK OF CENTRALIA,

Appellees,

and

C. S. REINHART and C. WILL SHAFFER, Stockholders of OLYM-
PIA BANK & TRUST COMPANY, a Corporation, for Them-
selves and All Other Stockholders of Said Company,

Appellants,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corpora-
tion, and A. R. TITLOW, as Receiver of the UNITED STATES
NATIONAL BANK OF CENTRALIA,

Appellees,

and

ROY A. LANGLEY, as Receiver of the STATE BANK OF TENINO,

Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Cor-
poration, and A. R. TITLOW, as Receiver of the UNITED
STATES NATIONAL BANK OF CENTRALIA,

Appellees.

BRIEF OF INTERVENORS AND APPELLANTS

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON,
SOUTHERN DIVISION.

C. WILL SHAFFER
Solicitor for Intervenor.

Business and Postoffice Address:
Olympia, Washington.

Filed

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BRIEF OF INTERVENORS AND APPELLANTS

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON,
SOUTHERN DIVISION.

C. WILL SHAFFER,
Solicitor for Intervenors.

Business and Postoffice Address:
Olympia, Washington.

INTERVENOR'S STATEMENT.

In the action brought by the receiver of the Olympia Bank and Trust Company against the United States National Bank of Centralia and A. R. Titlow, its receiver, C. S. Reinhart and C. Will Shaffer, stockholders and directors in the Olympia Bank and Trust Company, with the consent of the court and the receiver of the Olympia Bank and Trust Company, intervened in order that the court might have certain equitable phases of the case presented, deemed by the receiver inconsistent, or possibly so, with his causes of action.

The suddenness with which the Olympia Bank and Trust Company sprang into existence and its brief career, and the collapse of so many financial institutions in Southwestern Washington, coincident with the closing of the doors of the United States National Bank, is a story that can probably be best understood if stated in a narrative form.

Olympia, Tenino and Centralia are the localities and C. S. Gilchrist and W. Dean Hays the leading characters in this financial drama.

Springing meteor-like out of the wilderness, about thirty miles south of Olympia, on the main line of the Northern Pacific Railway between Seattle and Portland, is the now beautiful little city of Centralia, with its twelve to fifteen thousand people, well-laid-

out paved streets, fine homes and substantial business blocks. Branch railroads radiate to all parts of Southwestern Washington—fifty-some passenger trains daily entering or departing from the city. Immense sawmills are located here and large logging concerns do business from this point; lignite mines have been opened nearby and hundreds of thousands of tons of coal are shipped each year; in fact, a real, live, prosperous, business city in a very few years from what was once an almost impenetrable forest.

Centralia's wonderful growth was due in no small measure to the faith and enterprise of one man and one business institution. C. S. Gilchrist opened a small bank in Centralia shortly after the town started. He saw that the wonderful natural resources surrounding the place, if developed and reduced to useful form, meant prosperity for all. His bank grew as the city grew until soon it was a national bank, and but a little later the leading financial institution in Southwestern Washington, with deposits far above a million dollars; in fact, its business and the demands on it outgrew its limitations under the national banking act, and to meet these situations, allied state banking institutions were organized (see *Trans. of Rec.*, p. 129). Many a prominent business man owed his start in business to Gilchrist and his bank; many a big business concern was kept going

by the ready accommodation and encouragement of the United States National Bank. (Note some of these transactions in the testimony of Mr. Hill, book-keeper for the receiver, Trans. of Rec., p. 106; in testimony of Mr. Gilchrist, Trans. of Rec., p. 124.)

In Thurston County, between Olympia and Centralia, but slightly nearer the latter, is Tenino, a little sawmill and stone quarry town of about 1,500 people. In a business sense, as well as a geographical sense, Tenino was equally nearer Centralia, though tied politically to Olympia, its county seat and the state capital.

W. Dean Hays came to Olympia along about 1905, endeavoring to negotiate the purchase of the Olympia National Bank. He went into banking in Centralia and Chehalis for a short time, then purchased the Tenino State Bank. (See Trans. of Rec., p. 67.)

He became a prominent man in this section of the state. He was elected on the Republican ticket to the legislature in 1912 and was renominated in 1914. He owned a fine country villa and one of the finest houses in Olympia; he had an accomplished and talented family.

It appears that in July, 1914, Hays sold his bank in Tenino to C. S. Gilchrist, or to the United States National Bank. (See Trans. of Rec., p. 67). Hays

says: "In July, I sold my stock in the Tenino State Bank to Mr. Gilchrist and went away. He sent a man to take my place." (Trans. of Rec. p. 67, and especially latter part of page 67 and top of page 68.) Mr. Gilchrist infers this was not the fact, but nevertheless, he testifies:

"We had sent Mr. Daubney up to assist in the managing of the Tenino Bank." (Trans. of Rec., p. 115.)

And Gilchrist and Daubney came to Tenino to examine the bank before that. (Trans. of Rec., p. 68.)

Hays and Gilchrist had for years been very intimate, in fact, Hays seemed to be more the agent of Gilchrist than a free-acting business man. He says:

"Was connected in business, association, and commercial association with the United States National Bank." (See Trans. of Rec., p. 67.)

Gilchrist was, in fact, the United States National Bank's active manager. His father was a director, but took little active part; his cashier, Mr. J. W. Daubney, was also a director; Mr. C. S. Gilchrist was a director, first vice president and the active manager; Mr. George W. Dysart was the second vice president and director, while the fifth director was Mr. J. A. Vaness (Trans. of Rec., p. 113; see also cross-

examination of Mr. Gilchrist, Trans. of Rec., p. 125, and testimony of Mr. Dysart, Trans. of Rec., p. 115).

The United States National Bank became much in need of actual cash (see testimony of Trustee Dysart, Trans. of Rec., p. 113; and of Mr. Hill, showing some of the firms indebted and failed, Trans. of Rec., p. 116; and that of C. S. Gilchrist, Trans. of Rec., p. 124).

Olympia is the state capital; the state treasurer has four or five millions of dollars to distribute among the deposit banks. The state treasurer was a Republican; W. Dean Hays was of the same political faith, member of the state legislature and sure of re-election. Gilchrist came to Olympia many times to consult Hays about starting a bank in the capital city. (See Trans. of Rec., Pp. 125-6, his own testimony, and testimony of Hays, Trans. of Rec., Pp., 68-70.) He, the active manager and director, took his cashier, who was also director on August 19th, 1914, the day the articles of incorporation of the Olympia Bank and Trust Company were filed (see Trans. of Rec., Pp. 151-2) and there in Olympia, some thirty miles away from the bank, gave W. Dean Hays an affidavit to the effect that the Olympia Bank and Trust Company had on deposit in the United States National Bank the sum of \$50,000.00. (See Trans. of Rec., p. 170.)

As a result of these numerous visits of Gilchrist to Hays, the latter approached several men prominent in business and official circles in Olympia, urging them to subscribe for stock in the bank that was about to be organized. Olympia had no institution of the nature of a banking and trust company, and to these men the field seemed a good one, but many of them, while they approved of the idea and hoped to be able to take stock in such institution, did not at that time have the ready cash with which to purchase stock. Hays assured them that he had plenty of funds and would be glad to loan them the money temporarily, as he was anxious to have these men in with him because of their influence in the community. Each prospective stockholder who was in this condition was informed that the transaction was wholly a personal one between him and Hays and that no one else would know anything about it. Much of this solicitation was done by his attorneys, who assured the prospective stockholder that they were going in on that basis. (See Trans. of Rec., p. 96.)

Almost on the day these men were solicited, Hays called a meeting for the purpose of organization. He was anxious to get the bank started. He assured those present that a great many other prominent men desired stock in the bank, but since they could not be present at that meeting, he would subscribe for the

stock, and later on, if the absentees wished it, he would give the stock to them from his own allotment, and that as the stock had not been issued, he would leave it open so that he could very shortly issue it to them. Thus Capt. C. S. Reinhart, former president of the Olympia National Bank and Clerk of the Supreme Court of the State of Washington, took 15 shares; I. M. Howell, the Secretary of State for the State of Washington and former banker in Tacoma, took 50 shares; W. T. Cavanaugh, for 16 years Postmaster of Olympia, took 10 shares; H. T. Jones, member of the State Board of Control and large property owner, took 10 shares; W. A. Weller, F. G. Blakeslee and Chas. E. Hewitt, prominent business men, each took 10 shares; and C. Will Shaffer, State Law Librarian, 10 shares. Hays made a private deal with each of these stockholders, except Jones and Cavanaugh, to the effect that he was loaning them each money with which to subscribe to the capital stock. (See Trans. of Rec., p. 96.)

On the evening of August 14th, 1914, the stockholders organized by electing C. S. Reinhart president of the bank, I. M. Howell vice president, W. Dean Hays cashier, W. T. Cavanaugh assistant cashier, H. T. Jones chairman of the board of directors, and C. Will Shaffer secretary of the board of directors.

It was represented to these stockholders by Hays and his attorneys that another party was anxious to organize a bank of the same kind and that, if the Olympia Bank and Trust Company was rushed through and opened, such other parties would not enter the field. The bank was ordered opened as soon as quarters could be secured and furniture installed.

On the 19th day of August, C. S. Gilchrist, who had been in close touch with Hays in this situation, came to Olympia with the other director of the United States National Bank and the cashier, Mr. J. W. Daubney, and there gave to Hays a certificate to the effect that the Olympia Bank and Trust Company had on deposit \$50,000.00, and made affidavit thereto. (See Trans. of Rec., p. 170.) For this credit of \$50,000.00 Hays turned over to Gilchrist \$11,450.00 in notes of other stockholders and two of his own notes, one for \$12,500.00 and one for \$24,050.00. (See Trans. of Rec., p. 68.)

Mr. Gilchrist's own words:

“During the months of August, 1914, and September, 1914, and until the time the United States National Bank closed its doors, I was actively in charge of the United States National Bank as its vice president. I was the person who managed its business principally. I was the

active manager of the bank; I talked quite frequently with Mr. Hays about the organizing of the Olympia Bank and Trust Company. The *matter* was discussed in Tenino at first, and then at Centralia and at Olympia. I went over to Olympia quite frequently to talk with Mr. Hays about the subject. The \$50,000.00 certificate signed by Mr. Daubney was given to Mr. Hays in my presence in Olympia. Mr. Daubney and myself came over to see Mr. Hays about getting the Olympia Bank and Trust Company started. When we got to Olympia, we found that the \$36,550.00 certificate had not as yet been subscribed for. It was my understanding that Mr. Hays ultimately was to have \$10,000.00 worth of stock and not to exceed \$15,000.00, and when we went over the matter with Mr. Hays, we received the understanding that there was \$36,550.00 worth of stock which had not yet been subscribed for. I understood that all of the stock of the Olympia Bank and Trust Company had would be paid for before the bank could open up and do business. * * * The understanding that we had with Mr. Hays was that he was to subscribe for the balance of the stock of the Olympia Bank and Trust Company. * * * There was nothing said about the Olympia Bank and Trust Company subscribing for the rest of its own stock * * * that was impossible. He did not tell me that he was subscribing for the

Olympia Bank and Trust Company as cashier of the Olympia Bank and Trust Company—he was subscribing for it in his personal capacity. The stock had not yet been issued; it was about seven to ten days after issuing the \$50,000.00 certificate that the stock was turned over to us. We would not certify to the balance of the \$50,000.00 until we had something to show for it, so Hays sent the notes for \$36,550.00 and we took the other notes given by various organizers of the bank.

* * * When we issued the \$50,000.00 certificate we received \$48,000.00 worth of notes and \$2,000.00 in cash. * * * My understanding was that the stock was to be collateral to the two Hays's notes and not for the others. We did not ask for security on the other notes for \$11,450.00. I took into consideration the fact that he had associated with him the highest state officials and men who were held in high esteem by me, personally. I was willing to take all the notes given me at the time except the Hays's notes without any security at all. That day when I came up, I was anxious to have the bank started at an early date; to have it started and get through with it." (See Trans. of Rec. pp. 125-126-127).

Again:

"Mr. Hays told me that he subscribed for \$36,550.00 worth of stock personally; I had no other means of knowing it except what he told me. I never had any dealings with anyone with

reference to the \$48,000.00 worth of notes or to the \$50,000.00 worth of credit at the United States National Bank except with Mr. Hays. (See Trans. of Rec. bottom of p. 132 and top of p. 133).

And again, on re-cross-examination:

“I had no agreement with anybody except Mr. Hays—I do not mean to be understood that Mr. Hays was signing the note as trustee for the Olympia Bank and Trust Company. I did not testify on the former trial that Hays had authority to sign as trustee.”

The statute relating to banking and trust companies in the State of Washington is as follows:

TRUST COMPANIES, INCORPORATION, POWERS AND DUTIES.

Sec. 3346. “Seven or more persons of full age may become a trust company on the terms and conditions and subject to the liabilities prescribed in this act; the name of every company formed under this act shall contain the word ‘trust’, but shall not be that of any other existing corporation of this state; the capital stock of such trust company hereafter organized shall not be less than one hundred thousand dollars: Provided, That in cities having less than twenty-five thousand inhabitants such companies may be organized with fifty thousand dollars’

capital, and shall be divided into shares of one hundred dollars each, all of which shall be paid in cash before any trust company shall be authorized to transact any business, and such payment shall be certified to the bank examiner under oath by the president and treasurer or secretary of the trust company; * * *

(Sec. 3346, Rem.-Bal. Codes and Statutes of Wash.)

Sec. 3348. "The certificate of incorporation shall be acknowledged as required for deeds of real estate, and shall be recorded in a book kept for that purpose in the office of the county auditor where the principal place of business of such trust company in this state is to be established, and with the secretary of state: Provided, however, That before the corporation shall be authorized to transact business in this state other than such as relates to its formation and organization, the bank examiner shall examine, or cause to be examined, in order to ascertain whether the requisite capital of such corporation has been fully paid in cash, and if it appears from such examination that such capital stock has not been fully paid in cash, a certificate of authorization shall not be granted and no such corporation shall commence business until such certificate of authorization has been granted; but when it shall appear to the bank examiner that the entire capital stock has been paid in, and that such trust company is lawfully entitled to commence business he shall give to such company a certificate under

his hand and seal that such company is duly and legally organized under this act as a trust company, and authorized to transact business as such trust company in this state; the trust company shall cause such certificate of authority of the bank examiner, issued in pursuance in this chapter, to be published once a week for at least four successive weeks next after the issuance thereof, in a newspaper of general circulation in the place where said trust company is established, and shall file proof of such publication with the bank examiner."

(Sec. 3348 Rem.-Bal. Anno. Codes and Stat. of Wash., L. '03, p. 368, Sec. 3.)

Sec. 3349. * * * *"As soon as the certificate of authority is issued by the bank examiner as provided in the preceding section, the persons named in the articles of incorporation and their successors shall thereupon and thereby become a corporation and shall have power: * * **

(Sec. 3349 Rem.-Bal. Anno. Codes and Stat. of Wash., L. '13, p. 640, Sec. 1.)

Sec. 3296. * * * "Every certificate, assignment and conveyance, executed by the state bank examiner in pursuance of the authority conferred upon him by law, and sealed with the seal of his office, shall be received as evidence. * * *

(Sec. 3296 Rem.-Bal. Anno. Codes & Stat. of Wash., L. '07, p. 530, Sec. 35.)

In conformity with the above act, the state bank examiner made an examination of the credits of the Olympia Bank and Trust Company and certified from such examination that the stock had actually been paid for in cash and that the corporation had on deposit in a bank, as is required by law, the necessary amount of its capital stock. (See Trans. of Rec. p. 155).

While not in the record, it is a matter of public record in the state of Washington that the governor was of a different political faith from that of W. Dean Hays, and that the bank examiner is appointed by the governor, so that in this particular incident it cannot be reputed that there was collusion between Hays and the state bank examiner.

Thus, did the Olympia Bank and Trust Company start. It had a credit of \$50,000.00 in the United States Bank, less \$2,500.00 brought over by Mr. Gilchrist. The United States National Bank had received \$2,000.00 in cash and \$48,000.00 in notes, thus, its cash reserve was practically unimpaired.

The Olympia Bank and Trust Company was opened on the 21st day of August, 1914. (See Trans. of Rec. p. 70). Almost immediately, \$15,000.00 was gotten from the state treasury and \$5,000.00 from the city of Olympia, and transmitted to the United States National Bank and within 10 days thereafter, over

\$20,000.00 more had been transmitted to different places to the credit of the United States National Bank so that by September 1st there had been deposited in the United States National Bank, or to its credit, by the Olympia Bank and Trust Company, according to the statement of the receiver of the United States National Bank, \$101,498.91. (See Trans. of Rec. p. 158).

While the financial flotilla over which C. S. Gilchrist was high admiral was drawing nearer the great engulfing whirlpool, Mr. Dysart, the second vice president, had been around over the state trying to get the other banks to take his paper, as he says, to build up their cash reserve on account of the war—but why the Centralia National Bank should require a bigger reserve on account of the war is not stated. On September the 14th, Directors Dysart and Vaness, in their desperation, took charge of the United States National Bank. (See Trans. of Rec. p. 113). They determined the notes of W. Dean Hays were not worth having, though the notes of the other stockholders of the Olympia Bank and Trust Company were good notes. (See Trans. of Rec. pp. 113 and 127). They immediately told Mr. Gilchrist, without holding a formal meeting of the directors, that they did not want Mr. Hays's note, and that they wished to repudiate Mr. Gilchrist's dealings with Mr. Hays,

and that if the Olympia Bank and Trust Company had a credit of some eighty thousand dollars on the books of the United States National Bank, that Gilchrist, the active manager, and Daubney, the cashier, must proceed immediately to Olympia and get drafts from Mr. Hays against the credit of the Olympia Bank and Trust Company sufficient to cover Hays's notes. The other notes held by the bank were good notes and there was no need to worry about that. (Trans. of Rec. p. 127).

At no time did the United States National Bank or its directors repudiate the action of Gilchrist, who was the active manager of that bank as well as a director and its first vice president, when he placed on the books of the United States National Bank a credit to the Olympia Bank and Trust Company in the sum of \$50,000.00. This credit was acknowledged in all statements furnished by the United States National Bank while it was a going concern, and was also especially recognized by the receiver in his statement of account issued October 20th, one month after the closing of the doors of the United States National Bank. (See Trans. of Rec. p. 158). This cause was tried in the lower court practically one year and three months after the receivers had taken charge of their respective institutions and it was only near the close of the trial that the receiver of the United States

National Bank offered his repudiation. The trial court held with the receiver of the United States National Bank in this, but refused to hold with the intervenors in that the actual cash deposited in the United States National Bank was a trust fund in favor of the creditors of the Olympia Bank and Trust Company.

ASSIGNMENT OF ERRORS OF INTERVEN- ORS.

The trial court erred:

“First. For refusal to grant the relief prayed for in the complainant’s first cause of action, towit, for a credit of \$36,550 in the United States National Bank of Centralia, Washington.

Second. For the refusal to grant the relief prayed for in complainant’s second cause of action, towit, for a credit of \$10,000 in the United States National Bank of Centralia, Washington.

Third. For cancelling and holding void a credit of \$48,000 in the United States National Bank of Centralia, Washington, in favor of the Olympia Bank and Trust Company.

Fourth. For returning to the complainant certain notes according to the demand of the complaint of intervention but refusing to es-

tablish a trust fund of moneys deposited in the United States National Bank by the Olympia Bank & Trust Company as demanded by Intervenor's Cause of Action.

Fifth. That all of the claims on the part of the complainant and intervenors to a preferred and prior claim against the assets in the hands of the defendant receiver were denied with prejudice, but should have been allowed.

Sixth. That the complainant was allowed a general claim against the defendant as receiver in the sum of \$25,998.91 and no more on the accounting herein, when the complainant should have been allowed the sum of \$83,998.91.

Seventh. For holding that the United States National Bank was not bound by the conduct of the managing officers and directors when such officers and directors connived with and demanded of the cashier of the Olympia Bank & Trust Company that he, the cashier of the Olympia Bank & Trust Company, use the funds of the Olympia Bank & Trust Company in the United States National Bank to cancel the private debt of the said cashier in the United States National Bank.

Eighth. That complainant and intervenors were not allowed their costs in said action."

These assignments, with the exception of the fifth and in part the seventh, are coincident with the

assignments of the receiver appellant. The intervenors join in the claim set forth in the appeal on behalf of the receiver of the Olympia Bank & Trust Company and will discuss these assignments therefor in the order named, with particular stress, however, upon the fifth assignment.

SPECIFICATION OF ERROR NO. 1.

Gilchrist testified he was the manager of the United States National Bank:

“During the months of August, 1914, and September, 1914, and until the time the United States National Bank closed its doors, I was actively in charge of the United States National Bank as its vice president. I was the person who managed the business principally; I was the active manager of the bank.” (See Trans. of Rec., p. 125.)

Mr. Dysart, the second vice president and director, testified:

“Mr. C. S. Gilchrist was the active manager of the bank.” (See Trans. of Rec., p. 114.)

In most of the cases cited below, the principle is laid down that the bank is liable for the acts of the cashier, assuming, of course, as in most instances, the cashier is the executive officer of the bank so far as the financial operations are concerned, but with

the United States National Bank, the cashier might be termed assistant manager, both the manager and cashier were directors, but Gilchrist was also first vice president.

Then the active manager, who was first vice president and director, together with the cashier or assistant manager, who was also a director, came to Olympia to urge W. Dean Hays to take a loan from their bank. True, Mr. Gilchrist says he was disappointed that Hays's personal loan was required to be as large as \$36,000. He testifies that he was going to loan Mr. Hays \$10,000 and hoped not over \$15,000.

“It was my understanding that Mr. Hays ultimately was to have \$10,000 worth of stock and not to exceed \$15,000, and when we went over the matter with Mr. Hays, we received the understanding that there was \$36,550 worth of stock which had not then yet been subscribed for.” (See Trans. of Rec., Gilchrist's Testimony, p. 126.)

They, however, made Mr. Hays a larger loan, and it may be contended that the size of this loan was in violation of Section 5200, U. S. Revised Statutes, Bolles Nat. Bk. Act, Anno., 4th Ed., p. 71.

But you will observe that Mr. Gilchrist did not take this note to the United States National Bank

direct from Mr. Hays. He testified in his re-direct examination, as follows:

“The \$24,050 note was charged to the Union Loan & Trust Company. I directed that it be charged to the Union Loan & Trust Company and credited to the Olympia Bank and Trust Company.” (See Trans. of Rec., p. 125.)

Thus, for the claim of \$50,000, the officers of the United States National Bank received for the bank \$2,000 in cash, \$11,450 in notes of various persons and one \$12,500 note of W. Dean Hays direct to the bank and a claim against the Union Loan & Trust Company for a \$24,050 note signed by W. Dean Hays; in other words, the \$24,050 note was negotiated through the Union Loan & Trust Company.

The question is, did the officers of the United States National Bank have authority to take these credits, whether good or bad, in exchange for the credits of the United States National Bank to the Olympia Bank and Trust Company?

“The cashier ‘may bind the funds of the bank in matters of contract.’ ”

I. Michie, Banks and Banking, Sec. 102 (5C).

“The acts of the cashier of a bank in his capacity as such are binding on the bank.”

Burnham vs. Webster, 19 Me. 232.

Badger vs. Bank of Cumberland, 26 Me. 424.

Cooper vs. Townsend, 59 Hun. 624; 13 N. Y. S. 760.

Owens vs. Stapp, 32 Ill. App. 653.

“The cashier of a bank is the financial officer thereof and his agreements in behalf of his principal in all matters relating to its business of banking are binding upon it to the same extent as if made by a resolution of the board of directors.”

Wakefield Bank vs. Truesdale Bank, 55 Barb. 602.

Paterson vs. Syracuse National Bank, 80 N. Y. 82; 36 Am. Rep. 582.

Lloyd vs. West Branch Bank, 15 Pa. State 172; 53 Am. Dec. 581.

“Acts within the scope of the bank manager’s duties are not ultra vires and the bank is liable therefor.”

First Nat. Bk. vs. Brooks, 22 Ill. App. 238.

“The acting head of the corporation, whether it is the president, vice president, cashier or general manager, through whom and by whom the general and usual affairs of the corporation are transacted which custom or necessity has im-

posed on the officer—such acts being incident to the execution of the trust reposed in him—may be performed by him without express authority; and in such cases it is immaterial whether such authority exists by virtue of his office, or is imposed by the course of business as conducted by the corporation.”

Cox vs. Robinson, 27 C. C. A. 120, 82 Fed. 277.

A cashier's act, within the scope of the ordinary course of business, is binding upon the bank, though he was acting beyond the scope of the express authority conferred by it.

First Nat. Bk. vs. First Nat. Bk., 116 Ala. 520, 22 South 976.

All customary acts of the agent of a banking corporation are binding upon it.

Eastman vs. Coos Bank, 1 N. H. 23.

The cashier, or other executive officer of a bank has such powers as enable him to conduct the financial operations of the bank in the legitimate business of banking, such as the issuance of certificates of deposit.

See Tiffany on Banks and Banking, p. 321.

The power of the cashier to issue certificates of deposit is well recognized.

Cochecho Nat. Bank vs. Haskell, 51 N. H. 116, 12 Am. Rep. 67.

The president of a bank being its executive head under the usages and customs of modern banking, the rule that his power is limited to transactions expressly authorized by the directors no longer obtains.

Bartlett Estate Co. vs. Fraser, 11 Cal. App. 373, 105 Pac. 130.

The vice president of a bank who is in charge thereof has authority to bind the bank by extending the time of the payment of a demand note for a specified time and for a specified consideration, and suspending the right to sell collateral until the expiration of the extended time.

Wyckoff, Church & Co. vs. Riverside Bank, 119 N. Y. Supp. 937.

The cashier of a bank has general authority to discount and rediscount paper owned by the bank, and to sell and assign paper owned by it for a valuable consideration.

First State Bank's Receiver vs. Farmers' Bank, 155 Ky. 693, 160 S. W. 250.

On a question of the authority of a bank cashier to issue a specie certificate of deposit to a person who has no specie on deposit, similar acts, frequently done by the cashier, are admissible.

Robinson v. Beetle, 20 Ga. 675.

A bank, whose teller is authorized to certify checks is bound to an innocent holder by his certification. Although the drawer had no funds, and on this account the teller exceeded his actual authority.

Meads v. Merchants' Bank, 25 N. Y. 143, 82 Am. Dec. 331.

Hill v. Nation Trust Co., 108 Pa. St. 1, 56 Am. Rep. 189.

Evidences of debt in the ordinary course of business may be accepted and credited by a bank as the equivalent of money, in which case it becomes the owner of the paper, although it may charge dishonored paper back to the depositor.

Lummus Cotton Gin Co. v. Walker, 70 South. 754.

SPECIFICATION ON ERROR NO. 2.

This is covered sufficiently in the brief of the receiver appellant, so will be passed in the brief.

SPECIFICATION ON ERROR NO. 3.

The trial court held that Gilchrist and Daubney had no authority to make the loan to Hays, or to extend credit to the Olympia Bank and Trust Company. This will be discussed under several heads:

First—The loan was a valid one. (See discussion under Specification of Error No. 1.)

Second—The loan or credit extended was not unlawful. The United States National had a right to loan Hays \$12,500, and the Union Loan & Trust Company had a right to loan him \$24,050. But even if the United States National had loaned the whole amount to Hays directly, and it is only the Hays notes that are in question, as all the directors of the United States National were satisfied with the other notes, yet an excessive loan to Hays by the United States National was not a void loan. The bank officers might disregard the statute in making the loan, yet the contract would be enforceable.

“A violation of Sec. 5200 Rev. St., prohibiting a national bank from loaning more than ten per cent of its capital to any one person or corporation can be taken advantage of only by the government.”

Union Mining Co. v. Rocky Mt. Bank, 96 U. S. 640.

Maryland Trust Co. v. Nat. Mechanics Bank, 102 Md., 608; 63 Atl. 70.

Roe v. Bank of Versailles, 167 Mo. 406; 67 S. W. 303.

Portage First Nat. Bank v. Norwood State Bank, 15 N. D. 594; 109 N. W. 61.

Weber v. Spokane Nat. Bank, 64 Fed. 208.

Shoemaker v. Nat. Mech. Bank, 1 Hughes
(U. S.) 101; 21 Fed. Cases No. 12, 801.

Maryland Trust Co. v. Nat. Mech. Bank, 102
Md. 608.

Stewart v. Nat. Union Bank, 2 Abb. (U. S.)

Wyman v. Citizens' Nat. Bank, 29 Fed. 734.

Mills County Nat. Bank v. Perry, 72 Iowa 15.

Corcoran v. Batchelder, 147 Mass. 541.

Allen v. Xenia First Nat. Bank, 23 Ohio
St. 97.

Portland Nat. v. Scott, 20 Ore. 421.

O'Hare v. Titusville Second Nat. Bank, 77
Pa. St. 96.

Bly v. Titusville Second Nat. Bank, 79 Pa.
St. 453, and other cases galore.

See especially text in Bolles, *The National Bank Act*, Annotated, P. 72, Sec. 51.

The receiver of a national bank succeeds to no right beyond those which could have been enforced by the bank, its stockholders or creditors. He is not entitled to have a contract made by the bank, and which has been executed, set aside on the ground merely that it was *untra vires*.

3 Michie, *Banks and Banking*, p. 2009, citing
Brown v. Schleier, 55 C. C. A., 118 Fed. 981,
affirmed in 194 U. S. 18.

Loans to any person or company in excess of 10 per cent. of the capital stock of a national bank are not void, and in an action to recover such loans the defendant cannot interpose the defense that they were in violation of the national bank act.

Union Gold Hill Min. Co. v. Rocky Mountain Nat. Bk., 96 U. S. 640.

A note is not illegal because at the time it was discounted by the association the maker was indebted to the association in a sum equal to more than one-tenth part of its capital.

O'Hare v. Second Nat. Bk., 77 Pa. St. 96.

The right of government to forfeit the bank franchise for violation of the statute does not render an excessive loan void so as to preclude the right of the bank to recover thereon.

Shoemaker v. Nat. Mechanics' Bk., 2 Abb. (U. S.) 416. See, also, *Stewart case*, 2 Abb. (U. S.) 424.

Third—The loan was made with notice to all the directors. It must be admitted that Gilchrist, a director, knew of it; that Daubney, a director, knew of it. It must be assumed as a fact that Charles Gilchrist, the father of C. S. Gilchrist, a director, and president of the bank, knew of it; he was in the

bank as an officer of the bank and was not produced as a witness at the trial.

Therefore, three directors knew of the deal. Only two directors deny knowing anything about the loan to Hays—Directors Dysart and Vaness. There were only the five directors—Dysart was the second vice president as well as a director, and according to his own testimony was active in bank's affairs.

It will be presumed as a matter of law that Dysart and Vaness knew of the whole transaction.

“Acts of the cashier must be considered as done with the full knowledge of the bank where the transactions fully appear on the books of the bank.”

Deposit Bank of Carlisle v. Fleming, 44 S. W. (Ky.) 961.

Knowledge of one director acting for the bank is knowledge to the board. (See 1 Michie Banks & Banking, p. 843, and note 25.)

“When he is not acting in his own interest and has knowledge that a note offered for discount was procured by fraud, it is imputed to the bank.”

Bolles' Nat. Bank Act, Anno. (4th Ed.) 105.

Knowledge of a director in his official capacity is knowledge to the board.

Union Bank v. Campbell, 23 Tenn. (4 Hump)
394.

Bank v. Rhea, 59 S. W. (Tenn.) 442.

Sixth Ward Bank v. Stearns, 148 N. Y. 515;
42 N. E. 1050.

Notice to a director of a bank of facts affecting the character of negotiable paper is notice to the bank.

Clerks' Savings Bank v. Thomas, 2 Mo. App.
367.

“But notice to a bank director, or knowledge obtained by him, while not engaged officially in the business of the bank, will be inoperative as notice to the latter.

“In case of a joint agency (e. g., the directors of a bank), notice to either, while engaged in the business of his agency, is notice to the principal.”

United States v. David, 2 Hill (N. Y.) 451.

Crooks v. People's Nat. Bank, 72 N. Y. App.
Div. 331.

“Where two members of an insolvent firm are president and cashier of a bank their knowledge of the insolvency of their firm is the knowledge of the bank.”

Nisbit, Assignee, v. Macon Bank & Trust Co.,
12 Fed. 686.

Notice to officers of a bank acting as such is notice to the bank.

Md. Trust Co. v. Nat. Mech. Bk., 102 Md. 608.

National Security v. Edward F. Cushman,
121 Mass. 490.

Here it is held that:

“If a director of a bank, who acts for the bank in discounting a note, has knowledge that the note was procured by fraud, the bank is affected by his knowledge.”

“Actual Knowledge Not Essential to Liability: Actual knowledge of irregularities, however, is not necessary, since it is the duty of bank directors to use ordinary diligence in acquiring knowledge of the business of the bank.”

1 Michie Banks and Banking, p. 339, Sec. 57 (1a).

The authorities in support of the proposition here advanced are so numerous the writer is bewildered in the order in which they should be stated.

The great work of Michie on Banks and Banking, page 843, says:

“Where the director acts for his bank in a business transaction, either individually or as a member of the board of directors, knowledge which he may have obtained in relation thereto is

binding upon and imputable to the bank as a director is bound to communicate such knowledge to his bank.”

It is not contended that knowledge obtained in a private capacity by one director is notice to the board, but knowledge of a banking transaction by one director is knowledge of all. That the principal is liable for all acts of the agent within the scope of the agent’s authority is, of course, beyond dispute, and the bank cashier within the scope of his customary activities is the bank itself.

“The cashier of a bank is the financial officer thereof, and his agreements in behalf of his principal in all matters relating to its business of banking are binding upon it to the same extent as if made by a resolution of the board of directors.”

Wakefield Bank v. Truesdell, 55 Barb. 602.

Patterson v. Syracuse Nat. Bank, 80 N. Y. 82.

Lloyd v. West Branch Bank, 15 Penn. St. 172.

Michie Banks & Banking, 711.

The whole transaction appeared on the books of the United States National Bank and the president, who was a director, the vice president, who was the general manager and director, the cashier and director were in the bank all the time; in fact, Dysart, “vice president and director,” was there most of the

time—all the officers and all the directors except Vaness. All but Vaness were devoting their whole time to the bank's affairs and the books of the bank open to them, and the books showed the whole transaction. (See Trans. of Rec., p. 158.)

“A cashier has authority to bind his bank and *entries made by him*, even though relating to forged paper *charge the bank with notice.*”

1 Michie, Banks and Banking, 768.

“The directorate may be deceived by its agent's transactions, *but the directorate is presumed to have notice of all transactions appearing upon the books in regular order.*”

1 Michie, Banks and Banking, 768.

“The acts of the cashier must be considered as done with the full knowledge of the bank where the transactions fully appear on the books of the bank.”

Deposit Bank of Carlisle v. Fleming, 44 S. W. (Ky.) 961.

Furthermore, directors are estopped.

“Directors are estopped to deny action of officers where directors have known course of officers for a long time.”

First Nat. Bank v. Gaddis, 31 Wash. 596.

Wing v. Com. Sav. Bank, 103 Mich. 565, 61 N. W. 1009.

“When directors of a bank permit an officer to hold himself out to the public as being invested with absolute power to manage and conduct its affairs the bank cannot repudiate contracts made by him.”

Cox v. Robinson, 82 Fed. 277.

But where a bank issued a certificate of deposit for the accommodation of the depositor, and another loaned money to the depositor on the faith of the certificate, though with knowledge that it was accommodation paper, the bank is liable therefor.

Holland Trust Co. v. Waddell, 75 Hun. 104,
26 N. Y. Supp. 980.

And when a certificate of deposit, stating that a depositor had deposited in the drawing bank a certain amount of money, is delivered to and accepted by a bank named therein as payee, and the amount thereof placed by payee bank to the credit of the beneficiary named, a receiver of the drawing bank is estopped to claim that no consideration was received by the bank for the certificate.

Armstrong v. American Exch. Nat. Bk., 133
U. S. 433.

The right to issue certificates of deposit is regarded as an incidental right to banking.

* * *

A certificate of deposit is evidence of so high and satisfactory character as to the sum therein named and deposited, that to escape its effect and the amount claimed therein, the bank must overcome it by clear and satisfactory evidence.

Magee on Banks, p. 377, citing *First Nat. Bank v. Myers*, 83 Ill. 507.

A valid certificate of deposit is prima facie evidence of liability (*Am. Nat. Bank v. Pressnall*, 58 Kan. 69, 48 Pac. 556), and it seems that it is conclusive that the money was received on deposit (*Carroll v. Corning State Sav. Bank*, 136 Iowa 79, 113 N. W. 500.) * * * The certificate is an acknowledgment that the bank had the sum of money specified therein on its books to the credit of the plaintiff, and the burden of proof is on it to show that it has in some way discharged the liability. (*Cushman v. Illinois Starch Co.*, 79 Ill., 281.) The holder of a certificate of deposit payable in "current funds," who is otherwise entitled to recover thereon, is entitled to judgment for the amount specified in the certificate without proof of value. (*Fallon v. Safety Banking, Etc., Co.*,

45 Pa. Super. Ct. 193.) The maker of a certificate of deposit cannot overcome its effect as evidence of the deposit, except by clear and satisfactory evidence. (*First Nat. Bank v. Myers*, 83 Ill. 507).

2 Michie, Banks and Banking, Pp. 1353-54.

It is held in *Pacific Trust Co. v. Dorsey*, 72 Cal. 55, 12 Pac. 49, that the note of a stockholder, given to a bank as security for the payment of his first stock installment, was "property actually received," within the constitutional provision that stock could not be issued "except for money paid, labor done, or property actually received," and that the bank was authorized to issue its stock to such subscriber.

Fifth—There was a valuable consideration. Hays gave his note, which the court finds was worthless, but Gilchrist and Daubney did not find so. Gilchrist says he expected Hays to take only ten thousand dollars' worth of stock, and not to exceed fifteen thousand. (Trans. of Rec. p. 126.) They probably split the difference, and the one note for \$12,500 represented that agreement. The rest of Hays' stock was to be sold to other prospective stockholders. But Gilchrist got Hays' notes, one of which he was willing to take. Later on when the stock was issued he got the stock as collateral. Hays not only sent his own

stock but, which he had not authority to do, the stock of others.

“A national bank may take stock in another corporation as collateral.”

Westminster Nat. Bank v. New Eng. Electrical Works, 73 N. H. 465; 62 Atl. 971.

111 Am. St. Rep. 637; 3 L. R. A. (N. S.) 551.

Schofield v. State Nat. Bank, 38 C. C. A. 179;

97 Fed. 282.

The United States National got \$2,000 in cash, \$11,450 in good notes, for which Gilchrist said he did not want any security, a \$12,500 note which was not objectionable to Gilchrist, and the \$24,050 account in the Union Loan & Trust Co., based on a note that Hays was to take up when he disposed of some of his stock to some one else from his allotment. This was on the 20th day of August, 1914. About ten days after that Hays sent his stock as collateral. Whether these notes were good bankable notes is not for the court to enquire. The banking officers may have used poor judgment, but that goes with the business.

Gilchrist was the leading officer in the Union Loan & Trust Co., a state bank of \$100,000 capital. He had the right to put the note of Hays in that bank. So the transaction was not a bad one so far as the United States National was concerned. It had the

\$2,000 in cash, the \$11,450 in good notes, a \$24,050 note of Hays backed by the Union Loan & Trust Co., and Hays' note direct for an amount for which Gilchrist was willing to carry him.

In addition to all this, the United States National got in ten days some forty thousand dollars in actual cash from the deposits of the Olympia bank.

It was a time when the United States National need cash. For the credit given the Olympia Bank and Trust Company, in ten days then the United States National had \$11,450 in notes deemed good, a \$24,050 note indorsed by the Union Loan & Trust Co., a \$12,500 note of W. Dean Hays which Gilchrist was willing to carry indefinitely, and over \$40,000 in cash.

Under the act then in force, 15 per cent. was required to be held in reserve, so out of this transaction \$13,500 was all the United States National was required to keep on call. Thus she built up her cash reserve \$26,000 or \$27,000.

Gilchrist said they were trying to build up their cash reserve. (See re-direct examination of Gilchrist, Trans. of Rec., p. 123.)

Dysart said they were trying to build up their cash reserve. (See Trans. of Rec., p. 113.)

The United States National Bank profited very materially by the transaction.

Sixth.—The directors approved of the transaction by a majority of them actually knowing of the arrangement, and all of them knew it constructively by the whole record of the transaction being on the books of the bank. This first occurred on Aug. 20, 1914, then each day thereafter when remittances came to be credited to the Olympia Bank and Trust Company, and especially when, about Sept. 1, 1914, the stock was received as collateral, but absolutely on September 14th, when Dysart and Vaness, the other two of the five directors, ordered Gilchrist and Daubney to come to Olympia and get Hays to draw on the credit of the Olympia Bank and Trust Company to take up Hays' notes. They approved all the rest of the transaction except the Hays' notes; they approved the credit extended and deposits received, else they would not have ordered drafts drawn on it. They were going over the books. There can be no excuse now that they had no notice. They not only had notice then, but they ordered Gilchrist and Daubney to go to Olympia in the night time and get Hays to draw on his own bank to pay his private debt. They ordered a rape on the funds of the Olympia Bank and Trust Company to benefit them.

By this act they were guilty of a felony under the laws of the State of Washington, or they did not intend the notes to be paid. Both propositions will be

discussed, the criminal first. It is inconceivable to think these men—George Dysart, prominent lawyer and business man, and J. A. Vaness, logger and saw-mill man, conspired with the other directors of the United States National and W. Dean Hays, whereby Hays was to embezzle the funds of the Olympia Bank and Trust Company to pay his private debt. Yet if these men did order Gilchrist and Daubney to come to Olympia in the night time and get Hays to do as is claimed, they did actually commit a felony. As is said in

Maryland Trust Co. v. Mech. Nat. Bank, 102

Md. 616:—

“Whilst the gentlemen who were concerned in this transaction never dreamed for a moment that they were engaged in an undertaking which was unlawful because in the teeth of a general statute, and plainly subversive of a sound and virile public policy as herein later on pointed out; and whilst a purpose to do wrong was never in the most remote way contemplated by any of them; still men are held by the law, generally, to have intended the natural, and always to have intended the necessary, immediate and inevitable consequences of their voluntary acts; and however innocent their motives may have been, they must be treated, when their conduct and contracts are being dealt with in such proceedings as the one before us, precisely as though they designed to accomplish the results which necessarily, immediately

and inevitably flowed from what they deliberately did, pursuant to a contract to do the thing so done. A corrupt intent is not necessary. 15 Am. & Eng. Ency. L. 936."

Hays testifies that it was not the intention that his note should be paid—that the drafts were merely to fool the United States Bank examiner; and a jury in the state courts of Washington so found in a criminal action against Hays for misappropriation of bank funds.

This phase of the question does not enter into the case only as showing that all the directors of the United States National Bank knew of the whole transaction and approved of it, for at this meeting on the evening of the 14th of September the books of the United States National Bank were before them. They could see that on the 31st day of August the \$12,500 note had been charged off. (See Trans. of Rec., p. 158.) This was 15 days before the 14th day of September. They also could see that the United States National Bank had nothing to do with the \$24,050 note that had been negotiated through the Union Loan & Trust Co.

Mr. Gilchrist testifies in his direct examination, as follows:

"The \$24,050 note was charged to the Union Loan & Trust Co. I directed that it be charged

to the Union Loan & Trust Co., and credited to the Olympia Bank and Trust Company." (See Trans. of Rec., p. 125.)

They could see and knew that the United States National Bank did not have the \$24,050 note.

There is further proof of this; the two drafts that were issued were never negotiated; the \$24,050 draft has never been seen since that date so far as the receivers of the banks have been able to find. Inasmuch as the United States National Bank did not have the \$24,050 note, it had no use for the draft. The \$12,500 draft was never negotiated and was received by the state bank examiner after the close of both banks, without any marks or signs that it ever had been negotiated; in fact, it had not. It was not returned to the Olympia Bank and Trust Company in due course and therefore the Olympia Bank and Trust Company had no notice of them.

A draft not returned in due course, but held until after failure of drawing bank, is not binding on receiver of bank against which it is drawn.

Wood v. Green, 131 Tenn. 583, 1175, S. W. 1139.

This shows that the directorate of the United States National Bank approved of the whole transaction; that its cash reserve had been increased

markedly by the organization of the Olympia Bank and Trust Company; and that the cancellation of the note of W. Dean Hays for \$12,500 was not intended. The directors of the United States National had no control over the \$24,050 note.

Of course, all the officers of the United States National were grasping at straws to save their institution; they were even willing to commit what would appear on the face as felony in their desperation and in the hope that it would finally work out.

In all this, the United States National Bank was amply justified in extending the credits to the Olympia Bank and Trust Company on the evidences of values it had received. Mr. Gilchrist testified that all the other notes were good and that the stock sent down was collateral only to the Hays' notes, he, being an officer in both banks, could, in dealing with Hays, take the collateral for both notes. He said:

“It was our understanding that we were to receive stock as collateral for the Hays' notes. My understanding was that the stock was to be collateral for the two Hays' notes; not for the others. We did not ask for security on the other notes for \$11,450; I took into consideration the fact that he had associated with him the highest state officials and men who were held in high esteem by me personally. I was willing to take

all of the notes given me at the time, except the Hays' notes, without any security at all." (See Trans. of Rec., p. 127).

SPECIFICATION ON ERROR NO. 4.

Under the fourth assignment of error, the intervenors complained because the trial court returned to the receiver of the Olympia Bank and Trust Company the \$11,450 in notes. That these notes should be returned was part of our prayer, provided that the full amount of actual cash deposits made in the United States National Bank by and through the institution known as the Olympia Bank and Trust Company, be adjudged a preferred claim. We wanted full rescission and full restitution. This preference will be discussed under the next specification.

SPECIFICATION ON ERROR NO. 5.

After the receiverships were established, intervenors found that most of the stockholders of the Olympia Bank and Trust Company had been misled as to the source of wealth of W. Dean Hays, and being desirous of early meeting the depositors of the Olympia Bank and Trust Company and settling with them; and also, ascertaining that some of the stockholders, other than W. Dean Hays, and including him, could not be made liable on their stock subscriptions, at least not to the statutory limit, sought to present to the court what seemed like an equitable

compromise. Notwithstanding the fact that the cashier of the United States National Bank had certified under oath that the Olympia Bank and Trust Company had \$50,000 on deposit in the United States National Bank, and that the state bank examiner of the state of Washington had certified that he had carefully examined the assets of the Olympia Bank and Trust Company, and found that such bank did have actual paid-up capital stock of \$50,000, and that such capital stock was on deposit in a reliable and reputable bank, the intervenors were willing to make some sacrifice in the name of equity and fair dealing and so set forth in their complaint that the Olympia Bank and Trust Company was organized through conspiracy to defraud, which conspiracy was fostered by the officers of the United States National Bank and W. Dean Hays, as the agent of the United States National Bank. Intervenors are here now urging this court that if it should find that the trial court was justified in finding there was fraud against the United States National Bank in the organization of the Olympia Bank and Trust Company, and that the Olympia Bank and Trust Company was not legally organized, then we ask that the decree of the lower court be modified to the extent that the United States National Bank should not be permitted to benefit by its fraud, or a fraud of its officers, but that all the actual cash deposited in the United States National

Bank, as a result of this fraudulent conspiracy, should be declared a trust fund and be returned to the receiver representing the creditors of the Olympia Bank and Trust Company.

“A person who has been fraudulently induced to enter into a contract, has the choice of several remedies. He may repudiate the contract, and tendering back what he has received under it, may recover what he has parted with, or its value.”

20 Cyc. 87 C.

PROMPT DISAFFIRMANCE NECESSARY. — “The person who has been misled is required, as soon as he learns the truth, with all reasonable diligence to disaffirm the contract, or abandon the transaction, and give the other party an opportunity of rescinding it and restoring both of them to their original position.”

Pomeroy Equi. Jur. 3rd Ed., Sec. 897.

“All persons who are engaged in the perpetration of a fraud are liable for the damages occasioned thereby.”

20 Cyc. 87 C.

As stated above, there was no offer of rescission until one year and three months after the closing of the banks, and then only in open court near the close of the trial of this cause. But no offer of restitution.

“When the agent acts beyond and even in direct opposition to his express authority, but within the scope of his implied authority—that is, within the apparent authority contained in and conferred by the terms of his commission, or the nature of his official functions or employment, or appearing from a prior course of dealing with or on behalf of his principal, or from any other mode of his being held out to the world as appearing to possess the authority, *and the principal is personally innocent of such fraud—the principal can not acquire and retain any benefit obtained under such circumstances from the fraud, representations, or concealments.*”

Pomeroy Equi. Jur., 3rd Ed., Sec. 909.

“There are certain incidents which are requisite to the exercise of the jurisdiction, and to the granting of any relief, and which result partly from the equitable conception of fraud itself, or its effects upon the rights and liabilities of the two parties, and partly from the theory concerning remedies and their administration. These incidental requisites are referable, therefore, to the following general principles:

1. Fraud does not render contracts and other transactions absolutely void, but merely voidable, so that they may be either confirmed or repudiated by the party who has suffered the wrong.

2. If he elects to repudiate, and seeks for a remedy, then equity proceeds upon the theory that the fundamental transaction is a nullity; *and it administers relief by putting the parties back into their original position, as though the transaction had not taken place, and by doing equity to the defendant as well as to the plaintiff.'*

Pomeroy Equi. Jur., 3rd Ed., Sec. 915.

If Gilchrist, Daubney and Hays conspired to establish a bank in the city of Olympia not in conformity with the laws of the state of Washington, they practiced a fraud upon the state of Washington, they deceived the state bank examiner and, indirectly through the state bank examiner, because of the issuance of his certificate to the effect that the stock of the Olympia Bank and Trust Company had been fully paid up in cash and that such capital was on deposit to the amount of \$50,000 in a reputable bank, deceived the depositors and creditors of the Olympia Bank and Trust Company by inducing them to trust an institution that had no existence.

And if this is the case, the court should not permit the perpetrators of that fraud to receive the benefits.

— The trial court held that the deposits made by the patrons of the Olympia Bank and Trust Company and transferred to the United States National Bank were

made in due course and that the Olympia Bank & Trust Company was entitled to only a general claim. See the results of this. Under the court's finding, the Olympia Bank and Trust Company could not have been organized, could not have received a charter had it not been for, as he found, the fraud of Gilchrist and Hays. Because of this fraud, the United States National Bank received in actual cash upwards of \$40,000. But assuming that it received practically only \$25,000, its cash was enhanced that much. The bank is paying its creditors 50 cents on the dollar, or thereabouts, and hence, back to the Olympia Bank and Trust Company a little over \$12,000, the depositors of the United States National Bank thereby profiting to the extent of over \$12,000.

“The remedy which equity gives to the defrauded person is most extensive; it reaches to all those who are actually concerned in the fraud, all who directly or knowingly participated in its fruits and all those who derive title from them, voluntarily or with notice. ‘A court of equity will wrest property fraudulently acquired, not only from the perpetrator of the fraud, but’, to use Lord Cottenham’s language, ‘from his children and his children’s children, or, as elsewhere said, from any person amongst whom he may have parceled out the fruits of his fraud.’ ”

Pomeroy’s Equi. Jur., Sec. 918.

We contend that the depositors of the United States National Bank have no right to benefit at the expense of the depositors of the Olympia Bank & Trust Company if the Olympia Bank and Trust Company was in any way fraudulently established.

A constructive trust was thereby created in favor of the depositors of the Olympia Bank and Trust Company.

“Constructive trusts include all those instances in which a trust is raised by the doctrines of equity for the purpose of working out justice in the most efficient manner.”

Pomeroy Equi. Jur., Sec. 1044.

It seemed to the intervenors that, in view of the fact that, according to the books of the United States National Bank between August 20 and September 1, the 10 first days of the existence of the Olympia Bank and Trust Company, \$26,632.28 had been received from the Olympia Bank and Trust Company, the lower court was in error in holding that this large amount of money was deposited there in due course of business. The whole proceedings show that there could have been no Olympia Bank and Trust Company, or at least none for some days yet to come, had it not been for the United States National Bank. It's impossible to say when the Olympia Bank and Trust Company would have been or-

ganized, and if organized only by the connivance of the officers of the United States Bank, then equity should at least not favor the depositors of the United States National Bank.

SPECIFICATION ON ERROR NO. 6.

This specification is covered in the other specifications.

SPECIFICATION ON ERROR NO. 7.

Intervenors urge that there was approval of all from the very inception by at least three directors of the United States National, constructive approval of all the directors because the whole transaction was on the books of the company, and that it was at least approved on September the 14th, when a minority of the directors rescinded it only in part, but did not offer restitution.

Notwithstanding, as the lower court found, there was equal negligence, we contend that the directors of the United States National Bank had knowledge of the negligence on the part of their officers, while the organizers and directors of the Olympia Bank and Trust Company had no such knowledge. (See testimony of C. S. Reinhart, Trans. of Rec., p. 99; testimony of W. T. Cavanaugh, Trans. of Rec., p. 100; testimony of Chas. E. Hewitt, Trans. of Rec., p. 101; testimony of I. M. Howell, Trans. of Rec., p. 104; see also testimony of Gilchrist, Trans. of Rec., bottom of page 126 and top of page 127.)

But notwithstanding any negligence on the part of the trustees of the Olympia Bank and Trust Company, the directors of the United States National Bank, after the two minority directors had learned of what they deemed was fraud, should have rescinded in total.

“While a party entitled to relief may either avoid the transaction or confirm it, he cannot do both; if he adopts a part, he adopts all; he must reject it entirely if he desires to obtain relief. Any material act done by him, with knowledge of the facts constituting the fraud, or under such circumstances that knowledge must be imputed, which assumes that the transaction is valid, will be a ratification.”

Pomeroy Equi. Jur., 3rd Ed., Sec. 916.

“The most important practical consequence of the two principles above mentioned is the requisite of promptness. The injured party must assert his remedial rights with diligence and without delay, upon becoming aware of the fraud.”

Pomeroy Equi. Jur. 3rd Ed., Sec. 917.

The directors of the United States National, not rescinding in total, if rescinding at all, and delaying for more than a year and until the trial of this cause to rescind in part, was in fact an approval of the whole transaction.

The books of the Olympia Bank and Trust Company appeared to be reliable, and, in fact, as far as the bank was concerned, were. (See testimony of Receiver McKinney, Trans. of Rec., p. 60.) Interveners also contend that the certificate of the bank examiner was conclusive. The law requires the state bank examiner to examine the capital and assets of a prospective bank and trust company:—

“All of which shall be paid in cash before any trust company shall be authorized to transact any business.” (Sec. 3346 Rem. Codes and Stat. of Wash.)

“Provided, however, That before the corporation shall be authorized to transact business in this state, other than such as relates to its formation and organization, the bank examiner shall examine, or cause to be examine, in order to ascertain whether the requisite capital of such corporation has been fully paid in cash, and if it appears from such examination that such capital stock has not been fully paid in cash, a certificate of authorization shall not be granted; and no such corporation shall commence business until such certificate of authorization has been granted; but when it shall appear to the bank examiner that the entire capital stock has been paid in, and that such trust company is lawfully entitled to commence business, he shall give to such company a certificate under his hand and seal that such company is duly and legally organized under this act as a trust com-

pany, and authorized to transact business as such trust company in this state.” (Rem. Codes and Stats. of Wash., Sec. 3348.)

Under the statute quoted in the former part of this brief, this certificate speaks verity. The directors of the United States National Bank knew this certificate was obtained upon the affidavit of the cashier and director of the United States National Bank, in which he said:

“That the Olympia Bank and Trust Company has on deposit with the United States National Bank, Centralia, Wash., fifty thousand (\$50,000.00 00-100) subject to the *order* of the said Olympia Bank and Trust Company; that said money is deposited preliminary to the organization of the aforesaid bank; *that said deposit is unconditional and is subject to check only in the usual course of banking business.*” (See Trans. of Rec., p. 170.)

And knowing this, they never notified the state bank examiner that they wished to withdraw this certificate or affidavit. They let him continue the operations of the Olympia Bank and Trust Company until the directors of the Olympia Bank and Trust Company, themselves, after the failure of the United States National Bank, formally asked the state bank examiner to take charge of the Olympia Bank and Trust Company.

“The certificate then of the bank examiner taken from the books of the bank, bound the bank.”

Espey v. Bank of Cincinnati, 18 Wall, 604.

Polk v. Bank of Albion, 59 Barb. 226.

“The certificate of the cashier will bind the bank in favor of innocent third persons upon the principle of *estoppel in pais*, even if the certificate be not true.”

Morse on Banks and Banking, Sec. 155 (i).

“The comptroller has jurisdiction to determine as to the completeness of the organization, and his certificate is not open to collateral attack, and is conclusive for purposes of litigation.”

Casey v. Galli, 94 U. S. 673.

Citizens' Nat. Bk. v. Gt. Western Elevator Co., 13 S. D. 1, 82 N. W. 186.

“When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.”

Stephens, Evidence, Art. 101.

“The principle is, that where acts are of an official nature or require the concurrence of official persons, a presumption arises in favor of their regularity.”

Jones, Evidence, Sec. 30 (25).

“It is a rule of very general application that where an act is done which can be done legally only after the performance of some prior act, proof of the latter carries with it a presumption of the due performance of the prior act.”

Knorr County v. Ninth Nat. Bank, 147 U. S. 91,

See 9 Encyc. Evidence, p. 944.

“Where a banking corporation is attempted to be formed under a general law, it is often said that the requirements of the law must be strictly followed. But this is only relatively true. It will appear that objections of this character, as a general rule, can be urged only in favor of the state in a direct proceeding to attack the incorporation. * * * The state governs as to how the capital stock shall be paid, whether in money or otherwise. If the statute is silent on the subject, and the doctrine of payment ‘in money’s worth’ is held in the particular jurisdiction, there seems to be no reason why payment for the capital stock should not be made in property, provided such property was proper for use in the business. The statutes usually require the issuance of a certificate by proper authority where the organization is made under general laws, *which certificate is always evidence of due incorporation.*”

Zane, Banks, Sec. 19.

“The corporate existence may come directly in question or indirectly. It comes directly in issue when a suit is brought by the state to forfeit charter. * * * But when the due incorporation of a bank comes collaterally in question, a very different rules applies. * * * As to anyone who has contracted with the corporation as such, the fact of due incorporation is conclusively presumed. * * * When collaterally attacked the existence of the corporation may be proved in favor of the corporation by the certificate of proper authority, and this certificate is conclusive.” (Citing *Casey v. Galli*, 94 U. S. 673; *Keyser v. Hitz*, 2 Mackey, 473; *Thacker v. West River Bank*, 19 Mich. 196.)

Zane, Banks and Banking, Sec. 23.

Appellant cites the case of *Kimball as Receiver vs. Farmers and Mechanics' Bank*, 60 Wash., 611. This case is almost a perfect parallel to the case at bar, except, possibly, that all the incorporators of the State Bank of Washington knew of the irregularity of their corporation. In the city of Spokane was the Farmers & Mechanics' Bank; there were four persons who desired to establish a bank in Spokane, and under the law for the establishment of a bank without trust features, only three-fifths of the capital stock is required to be paid in cash. These incorporators received a certificate from the Farm-

ers & Mechanics' Bank to the effect that there was on deposit in the Farmers & Mechanics' Bank a requisite capital which, together with the affidavits of the incorporators which authorized them to incorporate the State Bank of Washington, gave them their charter. The incorporators had no funds in the Farmers & Mechanics' Bank, or at least insufficient funds, but the cashier accepted their checks and held them. Later on, against the credits of the State Bank of Washington, the cashier of the Farmers & Mechanics' Bank charged these checks. This was not authorized by the directors of the State Bank of Washington.

There is one more difference between this case and the case at bar, and that is, the court finds there was even no consideration for the acceptance of the checks of the incorporators of the State Bank of Washington, as there appears to be in the case at bar. Yet, notwithstanding that, and notwithstanding the fact that the directors of the Farmers & Mechanics' Bank, as a board, knew nothing of such credit extended to the incorporators of the State Bank of Washington, the court found that the Farmers & Mechanics' Bank, in an action brought by the receiver of the State Bank of Washington after it had become insolvent, was bound by the action of their cashier and president in giving this certificate for

the incorporation of the State Bank of Washington. The supreme court of Washington adopts the finding of the trial court as its opinion in that case, and the facts in that case are much more favorable to the defendant in the case at bar than are the facts in its behalf in this case. Respectful attention to this case is particularly urged.

It goes without saying that Hays could not use the funds of the Olympia Bank and Trust Company to pay his obligation, even with the consent of the board of directors. Statute clearly prohibits it, providing that no loans whatsoever shall be made to any officer:

“No trust company now in existence or hereafter organized shall make any loan to any officer, stockholder or employee from its trust funds, and such trust company shall not permit any officer, stockholder or employee to become indebted to it in any way out of its trust funds; any president, vice-president, director, secretary, treasurer, cashier, teller, clerk or agent of any such corporation who knowingly violates this section, or who aids or abets any officer, clerk or agent in any such violation, shall be guilty of a felony and punished accordingly.” (L. '03, p. 372, Sec. 6.) Rem. Codes and Stat. of Wash., Sec. 3351.

The officers of the United States National Bank must have known this, or should have known it, and, as argued before in this brief, it was not intended that Hays should pay his notes by this transaction, but even if he did intend so and the officers of the United States National Bank so intended, it could not be charged to the Olympia Bank and Trust Company.

“The cashier, whatever may be his general authority as to making loans, cannot bind the bank by lending its money to himself.”

1 Michie, p. 757, 126 Ga. 702.

“Where a rule of a bank prohibits its officers becoming its debtor, a transaction between the cashier and one who acts with notice of the rule will not affect the bank.”

1 Michie, p. 757, 73 Ga. 223.

“A cashier cannot bind a bank by drawing a check to pay his individual debt.”

1 Michie, p. 763.

Rankin v. Chase Nat. Bank, 188 U. S. 557.

SPECIFICATION ON ERROR NO. 8.

The three matters in controversy were the \$36,550 claimed to have been charged against our account in the cancellation of the Hays's notes; \$9,500 Blumauer notes charged up to us without any notice; and cer-

tain items of cash forwarded to the State Bank of Tenino. The last item in the State Bank of Tenino is of little concern, whether we get credit on the books of the United States National Bank, or on the books of the State Bank of Tenino. An item of \$9,500 the court found with us. This item included certain notes which had been charged to our account and no notice sent to us, and the notes still are in the possession of the receiver of the United States National Bank. The other item was the item of the \$36,550 note, wholly an illegal transaction. Gilchrist testifies that he knew Hays could not pay his private debt.

We think, in view of these conditions, and in the bringing in of other parties against our will, we were entitled to costs against the receiver of the United States National Bank.

CONCLUSION.

Through long years of acquaintance the writer has a high regard for the trial judge, but who, however, is only human, fallible, is liable to mistakes.

The writer feels that the trial court was unconsciously impressed with the idea that unless he stemmed the tide of clamoring hordes then seeking the funds of the United States National Bank nothing would be left for the common depositors. Fortunately now this situation has changed.

This impression is garnered from remarks of the court, both in the court room and at chambers, and further from the opinion of the court on the petition for rehearing. In this opinion the writer feels that the court assumed facts to exist that were not in the record, and had no foundation.

This impression is garnered from remarks of the applied to them as should be applied to the directors of the United States National Bank. The trial court finds the two banks were *in pari delicto*, but we think there is nothing in the record, in reason or law to support this. When Hays had his dealings with Gilchrist about starting the Olympia bank there wasn't any Olympia Bank and Trust Company, so how could it be bound. When there was an Olympia Bank and Trust Company it had nothing suspicious before it except the affidavit of the cashier of the United States National that the Olympia bank had \$50,000 on deposit subject to order absolutely, and also the findings of the State Bank Examiner in the form of his certificate that the stock had been paid for in cash, that the capital was all subscribed and the money in a good responsible bank, and that every part of the law had been complied with by the organizers of the Olympia Bank and Trust Company. This convinced the other stockholders that Hays had told the truth

when he said he had ample funds, and also convinced each that his own stock had been paid for in cash.

From that time on the directors of the Olympia bank were guided by their own books. Nothing ever appeared on their books to cause suspicion or questionable conduct. On the other hand at least a majority of the directors, in fact all the directors but one, of the United States National were in the United States National Bank all the time, and everything appeared on their books. On September 14, they formally discussed the transaction and approved it. Instead of disapproving it on that date they sent their officers out in the night time to get Hays to do an unlawful act, and on their own stationery had Hays commit a felony—and all of them. But the directors of the Olympia bank knew nothing of this. Then the United States National never negotiated the drafts; these drafts were never sent the Olympia bank, and although the directors of the United States National knew of this transaction the directors of the Olympia bank had no such knowledge, no inkling to cause suspicion until the United States National closed its doors. And yet the trial court held we were *in pari delicto*.

HE EXONERATED THE UNITED STATES NATIONAL AND ITS DIRECTORS FOR WHAT THEY KNEW AND DID, AND STUCK THE OLYMPIA BANK AND TRUST COMPANY FOR

WHAT ITS DIRECTORS DID NOT KNOW, COULD NOT KNOW,
AND DID NOT DO. THAT IS WHY WE ARE ASKING
JUSTICE AND EQUITY HERE.

Respectfully submitted,

C. WILL SHAFFER,
Intervenor and Solicitor for Intervenors.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK P. McKINNEY, as Receiver of the OLYMPIA BANK & TRUST COMPANY, a Corporation,
Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and A. R. TITLOW, as Receiver of the UNITED STATES NATIONAL BANK OF CENTRALIA,
Appellees,

and

C. S. REINHART and C. WILL SHAFFER, Stockholders of OLYMPIA BANK & TRUST COMPANY, a Corporation, for Themselves and All Other Stockholders of Said Company,

Appellants,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and A. R. TITLOW, as Receiver of the UNITED STATES NATIONAL BANK OF CENTRALIA,
Appellees,

and

ROY A. LANGLEY, as Receiver of the STATE BANK OF TENINO,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and A. R. TITLOW, as Receiver of the UNITED STATES NATIONAL BANK OF CENTRALIA,
Appellees.

APPELLEES' BRIEF

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FEB 17 1917

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STATEMENT OF THE CASE

As between Receiver McKinney and Intervening Stockholders, and Appellees.

This is an action brought by McKinney as receiver, on three separately stated causes of action (Tr. p. 5), as follows:

FIRST: For \$36,550 alleged to have been transmitted by the Olympia Bank to the United States National Bank at Centralia, for the purpose of deceiving the National Bank Examiner, who was then examining the United States National Bank.

SECOND: On account of \$10,000 alleged to have been sent by the Olympia Bank to the State Bank of Tenino, at the request of the United States National Bank.

THIRD: For \$9,500 in notes, charged by the United States National Bank against the Olympia Bank & Trust Company, and deducted from its account, which notes the appellant receiver says should not have been charged to his institution.

The trial court held in favor of Receiver McKinney on the third cause of action, and in favor of appellee, receiver of the United States National Bank of Centralia, in the first and second causes of action, and on appellant's prayer for an accounting allowed

appellants the amount of certain admitted credits due the Olympia bank from appellee bank.

The first cause of action, if regarded as stating any lawful ground of recovery, involves the validity of a credit of \$48,000 purported to have been given to the Olympia bank by our bank at Centralia, at the time of the organizing of the Olympia bank; for the remittance of \$36,550 referred to in plaintiff's complaint (Tr. 8) is only substantiated by proof of the delivery of drafts drawn in the name of the Olympia Bank & Trust Company for the purpose of cancelling or offsetting the previous book credit.

It is appellees' contention that this purported credit was based on a wrongful and fraudulent plan entered into between one Hays, formerly of Olympia, Washington, and C. S. Gilchrist, Vice-President of the appellee bank, by which Gilchrist, secretly conspiring with Hays, attempted to lend the credit of the United States National Bank of Centralia, the appellee, to a newly organized institution, of which appellant, McKinney, was subsequently appointed receiver.

When the Olympia bank was organized by Hays and the other appellant intervenors, its capital stock, it appears, was only "orally subscribed" (Supp. Tr. 234, 145, 547, l. 28). Many of the members who had offered to take stock in the bank being unable to be present at the organization meeting, \$36,500 worth of

stock (or about two-thirds of the whole) was directed to be issued in Mr. Hays' name, with the understanding that it should be distributed among the persons who had agreed to take it (Supp. Tr. 547).

None of the subscribers actually paid for their stock, except two, who paid in the amount of \$2,000, leaving \$48,000 unpaid. All except Hays, however, executed notes for the amount of their stock, payable on demand to the order of themselves and endorsed the same and delivered them to Hays. They say they understood Hays was going to lend them the money to pay for their stock, but they all admit they had never inquired whether he had ever done so, and that none of them ever paid anything on their stock. Nearly all of them admit that their notes were not bankable paper (Supp. Tr. 335); that they were not worth their face, or that they do not know what their notes were worth, if anything (Supp. Tr. 178), and that they were unable to pay them at the time the notes were given (Supp. Tr. 199), and have never paid anything on them, principal or interest (Supp. Tr. 179, 276, 327).

Mr. Howell, Vice-President, testified that he had a talk with Hays, and Hays told him that he wanted to use Mr. Howell's note for his stock subscriptions, just for a few days, until the bank should be opened (Supp. Tr. 315). Though borrowing from the new bank (Supp. Tr. 327, 328), he paid nothing on the note.

Under these circumstances Gilchrist and Hays, with Daubney, who assisted Gilchrist in the fraudulent transaction, meet at Hays' house, where they agree that the United States National Bank shall at once give the Olympia bank a credit for \$50,000 against the capital stock of the latter institution (Supp. Tr. 230). The following then occurs, as Hays, who came from Montana voluntarily to testify as a witness for appellant McKinney (Supp. Tr. 132), very reluctantly admits (Supp. Tr. 230, 604, 605). Gilchrist agreed to advance the necessary funds *upon the stock of the Olympia bank* (Supp. Tr. 230):

“Q. And finally you did arrange to get a credit on the capital stock?

A. Yes.

Q. And then you gave these notes as a sort of form in connection with that arrangement on the capital stock?

A. Yes.

Q. Then Mr. Hayes, at the time those notes were made up, you knew, Mr. Gilchrist knew, and it was recognized on all sides that as your notes, even if you had intended to make them as your notes, they would not have been of any value?

A. Well, of course he wouldn't take my personal note for thirty-six thousand dollars.

Q. You knew that perfectly well?

A. Yes, sir.

Gilchrist, the officer of our bank who did this wrong, is asked (Supp. Tr. 488):

“Q. At that time did you or did you not know of [that] the notes of Hays, if personal, if

simply taken as Hays' obligations, were worthless?

A. Yes, sir.

Q. Did you receive any money for the United States National Bank or any thing of value for that credit of \$50,000; if so, what?

A. I didn't receive any money, no, sir. I received stock of the Olympia Bank & Trust Company."

Again Hays of the Olympia Bank is asked (Supp. Tr. 231):

"Q. In other words, upon your books you charged the capital stock of the Olympia Bank & Trust Company as well as "undivided profit" of five thousand to the United States National Bank?

A. Yes, sir."

(Supp. Tr. 604, 605):

"The bank, through Mr. Daubney and Mr. Gilchrist, *had agreed to take this stock and keep it until it was finally disposed of.* They had made final arrangements, agreements were made and entered into *just at that time, however, Mr. Gilchrist made mention of the fact that that was in strict violation of the law, that they couldn't handle the stock in that manner, and in order to avoid that they took the stock with those notes.*"

Clearly the Hays notes were a sham. The substance of the transaction was a credit to the Olympia bank upon its capital stock. But while there is some apparent self-contradiction in Hays' testimony, he finally admits, and Gilchrist testifies very clearly, that, in fact, in so far as the notes had any reality at all in relation to the fraudulent scheme, the understanding was that whether they were signed by him individually or as cashier of the Olympia bank (a point on which

Hays was uncertain), (Supp. Tr. 172), they should not be treated as personal obligations of his own, but should be an obligation of the Olympia Bank & Trust Company, which it was expected could be paid out of the receipts of the Olympia Bank from the sale of capital stock (Supp. Tr. 569, 146, 146). Gilchrist testified that it was positively agreed that our bank might charge these notes back to the Olympia Bank & Trust Company at any time (Supp. Tr. 571, l. 24, 566, l. 13, 567, l. 4, 151).

As pay for his wrongful act in attempting to make it appear that the Olympia bank had a credit of \$50,000 in the United States National Bank, it seems that Gilchrist was to be made an officer in the Olympia bank (Supp. Tr. 560), and that he had the option (Tr. 76) or privilege of buying Hays' controlling interest in the Tenino bank, at an agreed price.

Such being the situation, in pursuance of this understanding, *the entire corporate stock of the newly organized Olympia Bank & Trust Company was charged on its books* (Supp. Tr. 231) to United States National Bank, and United States National Bank was given credit for such amounts of cash as were actually paid for stock that was sold (Supp. Tr. 233).

On August 31, 1914, eleven days after the Olympia bank opened for business, \$12,500 of the Hays notes were charged back to it in accordance with pre-

vious agreement, and the apparent balance created by the sham credit of \$48,000 reduced by that amount (Supp. Tr. 571). Two weeks later, and a little more than a week before the Olympia bank failed, the fact that Gilchrist had attempted to finance the Olympia Bank & Trust Company was discovered by his board of directors (Tr. 113), and he told them that under his agreement with the Olympia Bank & Trust Company he had a right to charge back the entire remaining stock and notes and cancel the credit at any time, and his directors ordered him to do immediately (Supp. Tr. 457). This meeting was in the evening, and Gilchrist was sent at once to Olympia, and there called on Hays early the following morning, where Hays signed drafts in the name of the Olympia Bank & Trust Company to the amount of \$36,550, a sum equal to the two notes given by Hays at the time the Olympia bank was organized. Gilchrist says that at that time he delivered to Hays the two notes and the stock (Supp. Tr. 567). Hays says that he then received only the stock (Supp. Tr. 155). The stock was found in the vaults by Receiver McKinney (Supp. Tr. 438), and there is strong ground for suspicion that Hays, who was tried on a criminal charge in connection with this very transaction, and who says he cannot remember whether the notes were signed personally or as cashier, destroyed them. The notes given by the other stockholders, aggregating \$11,500, were found by Receiver Titlow

among the files of appellee bank, and their return to Receiver McKinney was demanded by intervenors (Tr. 26). They were accordingly tendered in open court to that receiver by appellee, by its answer to intervenor (Tr. p. 31), offered in open court to appellant, *and such tender accepted* by intervenors (Supp. Tr. 586, 587), though refused by appellant receiver!

ARGUMENT

It is the contention of appellees that the intervenors have no standing or right to be heard in this cause, and that the only issues open to the consideration of this court are these arising under plaintiff's amended complaint.

As to these issues, plaintiff contends that appellant McKinney is entitled to recover nothing under his first cause of action for the following reasons:

FIRST: The purported credit, against which the charge complained of was made, was an attempt to lend the credit of a national bank to organize a state bank, and was beyond the powers of a national bank under Federal laws.

SECOND: The charge of \$36,550 complained of gave rise to no liability to Olympia bank and its receiver for the reason that the same was not deducted from any real or actual balance existing in favor of the Olympia bank, but was merely a form to offset and can-

cel in part a false credit entered by Gilchrist, such original credit being invalid because the board of directors of our bank had never consented to the transaction, which was not in the ordinary course of business, was beyond the authority of its officers, and was based on a fraudulent conspiracy to which the Olympia Bank & Trust Company, through its cashier, was a party. The whole transaction between Hays and Gilchrist having been a fraudulent and wrongful one, the Olympia Bank & Trust Company and its receiver are estopped to set up the agreement to give credit to the Olympia bank, a cancellation of which forms the basis of plaintiff's cause of action, and a court of equity will leave the parties as it finds them.

THIRD: If there ever was a valid credit for \$48,000 by reason of transactions between Gilchrist and Hays, it was by its terms subject to be cancelled and charged back to the Olympia bank.

I.

The giving of the \$48,000 credit by the United States National Bank to the Olympia Bank was ultra vires of the United States National Bank as amounting to a loan of its credit to the Olympia Bank for the purpose of starting it in business. It was therefore subject to cancellation at any time.

Surely no more outrageous demand was ever as-

serted against a bank receiver, representing thousands of innocent depositors, than is here presented.

Certain persons desire to incorporate a bank in Olympia, but are without funds to finance it. Through their agent, Hays, they cause an officer of the United States National Bank to violate his duty to the depositors and stockholders of his bank, by falsely certifying that the Olympia Bank has \$50,000 deposited with that bank, although, in fact, it has not one dollar so deposited. As a part of this transaction (though a mere sham, devised only to disguise the illegality of the real transaction) (Supp. Tr. 604, 605), the United States Bank takes into its possession the worthless notes of the incorporators of the Olympia Bank, as well as the worthless stock of that bank; later the United States Bank returns \$36,550 of these worthless notes, and cancels to that extent the fictitious credit given. As to the balance of the notes, amounting to \$11,450, the defendant receiver has disavowed any claim, and in his answer (Tr. 15) offered to return them to the plaintiff, thus completing the cancellation of the false credit.

A more obvious misuse of the functions of a national bank and a plainer transgression of the limits of its corporate powers can scarcely be conceived. The transaction most plainly falls within the inhibitions which the courts of the United States have clearly

defined against the prostitution of the powers and functions of National Banks to subserve private and other purposes lying outside the scope of their legitimate banking business. Here we have an officer of a national bank, certifying to a non-existent fact, pledging the credit of his institution for the purpose of assisting another institution conceived in fraud and entirely wanting in assets. This is not the case of a loan of *money* to an insolvent. It is a loan of *credit*. Now the bank could not lend its *credit* to any institution, however responsible. The fact of the beneficiary's insolvency only aggravates an offense which needs no aggravation to effectuate its perfect and entire illegality.

This Court is not a stranger to the doctrine for which we contend. In *Bowen vs. Needles National Bank*, 94 Fed., 925, your Honors had under consideration a case where a national bank advised plaintiff that it would pay all checks of a third person, although such person had no funds on deposit, as was known to both plaintiff and the bank. Plaintiff in reliance upon such promise, cashed checks of such third person. It was held that the bank was not liable upon drafts which it had issued in payment of such checks.

This case decided by your Honors was approved and followed in a similar case before the Circuit Court of Appeals for the 8th Circuit, in *Merchants Bank of*

Valdosta vs. Baird, 160 Fed., 642, which holds that a National Bank—

“Cannot lend its credit to another by becoming surety endorser or guarantor for him. It cannot for the accommodation of another endorse his note or guarantee the performance of obligations in which it has not interest. Such an act is an adventure beyond the confines of its charter, and when its true character is known, no rights grow out of it, though it has taken on in part, the garb of a lawful transaction” (citing authorities) “An act that is void because beyond the powers of a National Bank, cannot be made good by estoppel” (citing authorities).

In the leading case of the *Commercial Bank vs. Pirie*, 82 Fed., 799 (C. C. A. 8th Cir), the defendant bank attempted to guarantee the payment by one Webb for any goods which he might purchase during a certain week. The Court says:

“But it has never been supposed that the board of directors of a national bank can bind it by contracts of suretyship or guaranty which are made for the sole benefit and advantage of others. The national banking act confers no such authority in express terms or by fair implication, and the exercise of such power by such corporations would be detrimental to the interests of depositors, stockholders, and the public generally.”

A similar case is *First National Bank vs. American National Bank*, 72 S. W., 1059, Mo., where the question of ultra vires with respect to such transactions is fully discussed and numerous authorities cited.

In *First National Bank vs. Hawkins*, 174 U. S., 364; 19 Supreme Court 739, it was held that a national bank is without power to purchase as an investment shares of stock in another national bank, and in case of the insolvency of the latter, the purchasing bank cannot be held liable to assessment upon the stock. The Court says (p. 742 Supreme Court Reporter):

“If the previous reasoning be sound, whereby the conclusion was reached that, by reason of the limitations and provisions of the National Banking Statutes, it is not competent for an association organized thereunder to take upon itself, for investment, ownership of such stock, no intention can reasonably be imputed to congress to subject the stockholders and creditors thereof, for whose protection those limitations and provisions were designed, to the same liability by reason of a void act on the part of the officers of the bank as would have resulted from a lawful act.”

Similarly in the case at bar, the stockholders and creditors of the United States National Bank are not to be subjected to loss by reason of the illegal acts of its officer. There is no reason to prefer the *plaintiff* over the *defendant* receiver, as the learned judge who tried this case below well says (Tr. 205).

See also *First National Bank vs. Converse*, 200 U. S. 425; 50 L. Ed. 537.

Swenson Bros. Co. vs. Commercial State Bank, (Neb.) 154 N. W. 233.

Observe that the stock in the Olympia Bank

handed to Gilchrist, being of no value, and it not being contemplated that the U. S. National Bank should have any rights in respect to it, was not *collateral* in any sense whatever. In fact Gilchrist seems to have become merely the depository of this stock, the intention being that it should be redelivered to the Olympia Bank as fast as it was sold, or the stockholders' notes paid up. But even if it had been security for the ultra vires undertaking of the U. S. National Bank, that contract would nevertheless be unenforceable.

Seligman vs. Charlottesville National Bank, Fed. Case No. 12642 (cited with approval by this Court in the Bowen case, 94 Fed. 928).

Johnston vs. Charlottesville National Bank, Fed Case 7425.

National Bank of Brunswick vs. 6th National Bank, 61 Atlantic, 889.

II.

The original credit to the Olympia Bank was fraudulent and void.

The transaction was much as if a manufacturer had arranged to ship to a mercantile firm packing cases, purporting to contain goods, but really empty, and conspiring with the merchants' shipping clerk, had induced him to agree to credit the shipper with an amount representing the value of the cases if filled. The credit having been entered in his company's books by the clerk who receives the empty cases, and dis-

covery being imminent, the cases are shipped back and the credit charged off by a counter-charge in equal amount. Can the company, whose empty cases are thus returned, hold the original consignee liable because the counter-charge indeed is founded only on the return of the same mere empty shells which the merchant had himself received?

With regard to the original transaction, Hays testified (Supp. Tr. 145):

“Q. You had it practically all subscribed for?

A. Yes.

Q. By other persons than yourself?

A. Yes.

Q. And you had not taken notes from all of those persons, had you?

A. No.

Q. Then in order to open the bank did you use any of the stock of the Olympia Bank & Trust Company?

A. Yes.

Q. What amount of stock of the Olympia Bank & Trust Company, if any, did you use in obtaining the credit referred to for the Olympia Bank & Trust Company?

A. About Thirty-six Thousand Five Hundred Dollars, near that.

Q. Did you ever obtain any personal or individual credit for anything in connection with that?

A. No, sir.

Q. Nothing ever passed through your hands individually, no money or credit ever passed through you individually in that transaction?

A. No, sir,—well you mean for that Thirty-six Thousand Five Hundred?

Q. Yes.
A. No."

(Our opponents claim that Hays personally borrowed \$48,000 of us).

"Q. Well, as to that stock which had not been paid for, which you say had been asked for and not paid for, did you give a note signed by yourself as an individual transaction, of your note, or did you give it to accommodate the Olympia Bank & Trust Company in raising these funds or how did you give it, under what understanding did you give it?

A. I give it for the Olympia Bank & Trust Company in order to have this bank open.

Q. Was there any understanding as to whether or not you should be personally liable on those?

A. I wasn't to be personally liable.

Q. You were not to be personally liable on them?

A. No, sir.

Q. As between you and the Olympia Bank & Trust Company?

A. Well, as between me and the United States National Bank of Centralia, to whom I gave the notes.

Q. What was your understanding with the Olympia Bank & Trust Company with relation to that?

A. The understanding was that as the stock was paid for asked for, that it would be paid for and credited the United States National Bank of Centralia, and the stock returned to the purchaser.

Q. Were you doing that for the Olympia Bank & Trust Company then, is that what you mean?

A. Yes, sir.

Q. You regarded the transaction, the real transaction with regard to that capital stock and

the credit, your understanding was that there was a sort of loan of credit by the United States National Bank to the Olympia Bank & Trust Company, which was to be repaid in that way?

A. Yes, sir.

Q. Was that what the real transaction was according to your understanding?

A. Yes, sir."

As to credits to the U. S. National Bank, Hays is asked:

"Q. In other words, whenever you received any money from any one else than the United States National Bank in the payment for any stock of the Olympia Bank & Trust Company; you credited the United States National Bank with that item when you had already charged them with the whole capital stock, is that so?

A. Yes."

Gilchrist testifies:

"Q. What was that agreement, if there was such an agreement?

A. The agreement was to the effect that any of the arrangements that we finally made was simply a temporary arrangement on behalf of the Olympia Bank & Trust Company, and at any time thereafter or very shortly after, they got started that we would at any time be allowed to charge these notes back to the account."

(Supp. Tr. 566):

It was my understanding that he (Hayes) signed such a note and that they (directors of the Olympia Bank) had knowledge of the manner in which it was to be paid.

Q. And was that manner of its being paid, do you refer to the manner in which it was to be paid in your previous statement that it was to be charged to the Olympia Bank & Trust Company by you? (Supp. Tr. 567).

A. Yes, sir.

(Supp. Tr. 571).

I testified to the fact that the understanding between Mr. Hays and I was to the effect that any time it were necessary, we were at liberty to charge those notes to this account.

(Supp. Tr. 572).

The arrangement or agreement was made between myself for the United States National Bank and W. Dean Hays on behalf of the Olympia Bank & Trust Company.

The notes given were mere forms to cover up the transaction and make what was illegal in substance appear like a legitimate transaction (Supp. Tr. 230, 604, 605).

That Gilchrist who had already, as appears from Daubney's testimony, begun to incur the suspicion of his own Board of Directors, was in fact acting in his own private interest and not in the interest of his bank in entering this false credit, is finally brought out, and he himself *is finally compelled to admit he was promised a position as an officer of the newly organized Olympia Bank* (Supp Tr. 560):

Q. Was there any talk in connection with your transaction of the Olympia Bank of your being later made an officer of that bank?

A. "Well, Hays had suggested at one time, that he would like to have me associated with them in the capacity of an officer of the bank."

Q. "*Was that one of the things that was held out to you to occur in the future, was it or wasn't it?*"

BY MR. OWINGS: Objected to as leading.

BY THE COURT: Objection may be overruled.

BY MR. OWINGS: Exception.

A. "Yes, I may say that I had been spoken

to in regard to taking an official position in connection with affairs of the bank."

Gilchrist says that his principal motive in making this false entry of credit in favor of the Olympia bank was to assist Hays so that he would be able to take care of the Tenino bank (Supp. Tr. 529).

It will perhaps be contended by our opponents that this motive was one *for the benefit of the appellee bank* as well as for Gilchrist's benefit as purchaser of the controlling stock in the Tenino bank.

Even this suggestion must give way, however, for it clearly would have required but a small fraction of the credit extended to the Olympia bank, to have taken care of the Tenino bank, and the testimony of both Dysart and Gilchrist shows that in fact the United States National Bank had refused any further aid to Tenino, whose account was part of the time overdrawn and part of the time showed a small balance.

We respectfully submit to the court that the whole testimony shows that this false credit was entered through fraud and conspiracy, and without consideration, except a sham consideration of notes which were made as a mere form, and that for these reasons the decree of the court below should be affirmed.

Whether Hays had *authority* from the Olympia bank to perpetrate this fraud seems to us immaterial.

True, the President admits the unlimited leeway given Hays as follows (Supp. Tr. 242):

“Q. Did you,—do you recollect, Mr. Rhienhart, a resolution of the board of directors at the organization meeting, leaving to yourself and Mr. Hays the making of such arrangements as should be considered advisable to open the bank?

A. Yes.

Q. Did you undertake to make such arrangements?

A. There was scarcely anything, no sir, to be done at that time. Mr. Hays had, previous to all this, on his own responsibility, he had provided a room and gotten furniture and everything substantially ready to open. I simply, after that resolution, I acquiesced in the whole thing.

Q. *And went ahead and left it to him to open in whatever manner he arranged?*

A. Well, with the advice or the suggestions that I made from time to time, and about all the suggestions I made was with reference to keeping the books up. That wasn't complied with, however.

Q. You are familiar, however, with the fact that *the books do show that the capital stock of the bank was charged up to the United States National Bank of Centralia?*

A. *Why I have understood that is the fact, yes*” (Supp. Tr. 245).

“Q. *And you and everybody else regarded Mr. Hays practically as the Olympia Bank & Trust Company, isn't that so, leaving it to him to handle it and manage it and make its financial arrangements?*

A. Yes.”

And the other intervening stockholders corroborate this testimony. At any rate, the stockholders and

trustees (for they are practically the same), are shown to have left all duties and responsibilities to Hays, and surely the Olympia bank is not in a position to seek in a court of equity the recovery of a profit or unearned credit through this transaction.

Modern Woodmen of America vs. Union National Bank, 108 Fed., 753, C. C. A., 8th Circuit; (certiorari denied, 21 Supreme Court Reporter 926).

Defendant bank held not liable for a sum of money which it had falsely certified that it had in its possession as belonging to the plaintiff, where such certification was made in the *bona fide* belief that the facts were known to plaintiff and that plaintiff would not be misled, though plaintiff was actually misled as a result of the certification. The Court says:

“In the present instance it appears that the defendant bank did not have in its hands on December 31, 1895, any funds belonging to the plaintiff company; *that the credit given to it on that day was purely fictitious*; that it was given in reliance upon representations made by Smith that the plaintiff understood it to be fictitious, and upon the further assurance that the defendant should incur no liability by giving the credit. *It goes without saying that under such circumstances the law will not imply a promise to pay a sum of money which was never received.*”

Daubney's "Certificate of Deposit" and Hays' Attempt to Deceive the U. S. Bank Examiner."

It will be remembered that it is shown that Daubney, cashier of the United States National Bank, signed an affidavit purporting to certify that the Olympia bank had \$50,000 on deposit in his institution. This affidavit was admittedly made at Hays' residence, and was admittedly false at the time it was given, since no one claims that at that time anything whatever was actually on deposit in our bank to the credit of Olympia. *While there is no evidence that this certificate or affidavit was ever brought to the attention of the State Bank Examiner or otherwise actually used by the Olympia bank in any manner, or that it was ever shown to any person except Hays*, the question may naturally occur to the court whether this certificate in some way estops us from denying the validity of the credit, especially if the certificate was given with a fraudulent purpose on the part of Gilchrist and Daubney. There are, it seems to us, four answers to this suggestion:

First. The certificate, dated and given *at Olympia*, at a distance of thirty miles from United States National Bank, and not being a certificate of deposit or other evidence of debt which Daubney had any authority to sign in behalf of the bank, does not estop the bank from denying the credit. It will be considered purely

as an individual act of Daubney in his personal capacity. Any other rule would appear to be impossible.

Second. There is, as above stated, no evidence whatsoever that the certificate was in any manner used for the purpose of obtaining authority to open the bank or for the purpose of obtaining deposits.

Third. As suggested under another part of this brief (p. —), it not only does not appear that any part of the recovery demanded by appellant McKinney is required for payment of depositors or creditors of the United States National Bank, but, on the contrary, *it appears that the recovery already permitted is more than sufficient for the payment of all depositors of the Olympia bank in full*, and that a further recovery could only inure to the benefit of the stockholders, who are not entitled to assert estoppel against United States National Bank.

Finally. The whole question of estoppel to deny an apparent credit fraudulently inserted in either bank for the purpose of making the bank's position appear better than it really was, is immaterial in this case, because such claims offset each other. The drafts transmitted to the United States National Bank as Receiver McKinney himself alleges, for the purpose of deceiving the National Bank examiners, and by Olympia and charged to the Olympia bank as offsets to the original false credit of \$48,000, put the Olympia

bank in precisely the same relation to the question of estoppel to deny credits issued for a fraudulent purpose, as is the United States National Bank. That is to say, if either bank is bound by the act of its officers in issuing false credits to the other, both are equally bound with the result that one charge offsets the other. In connection with this matter of offsets, too, it appears by the statements of counsel for intervenors that appellee bank is not able to pay its depositors in full, *and its receiver is thus in a position to claim against appellants all rights of estoppel existing in favor of innocent depositors*; while the contrary appears as to the receiver of the Olympia bank.

If Hays did lend \$36,550 to the Centralia bank for the purpose of deceiving the bank examiner as stated in plaintiffs first cause of action, and his act was that of the Olympia bank, the illegality of the transaction prevents plaintiff's recovery.

That such a transaction is illegal and that the law will leave the parties to it in the same situation in which it finds them, is too clear to require extended discussion or citation of authorities. The parties in such a case are in *pari delicto* and the law will aid neither.

The cases in which this doctrine has been applied are numerous. Thus, in *Bryant vs. Wilcox*, 100 N. W. 918 (Michigan), the plaintiff gave defendant \$500 which defendant was to exhibit to a creditor of one

Keith in order to convince the creditor that a certain mortgage, which the defendant held upon Keith's property, was much larger than it really was in order to defeat the claim of that creditor. Defendant failed to return the money and plaintiff sues to recover it. Held, that plaintiff could not recover. The court says:

"By this testimony the money was placed in defendant's hands for the sole purpose of effectuating a fraud upon the creditors of Keith. The law will leave the parties to such a transaction where it finds them and will not, where both are equally culpable, engage itself to determine the right of the matter as between them."

In *Maryland Trust Company vs. National Mechanics' Bank*, 63 Atlantic 70 (Maryland), the plaintiff national bank loaned to the defendant trust company a large sum of money for the purpose of enabling the trust company to buy its own shares and to deceive the public by making it appear that there was a market for the shares, thus increasing their salable value. Held, that the money having been lent for an illegal purpose could not be recovered. The court says, page 78:

"It is, generally speaking, true that a lender of money is not concerned with the purpose for which the borrower secures it; but when he does know, and is apprised that it is being borrowed for an illegal use, the situation is altered, and he becomes implicated as a participant in the unlawful transaction in furtherance of which the fund is used."

The Olympia bank in the present case (unless its contention that it is not responsible for Hays' act can be sustained) stands in precisely the same situation that the National Mechanics' Bank occupied in the case just stated.

In the leading case of *McMullen vs. Hoffman*, 19 Supreme Ct. 839; 174 U. S. 639, the Supreme Court of the United States declined to give relief to a party claiming a right to accounting with respect to transactions entered into as a part of a scheme to prevent bidding on public contracts. The court says:

"The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought in which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract."

In *Bartle vs. Nutt*, 4 Pet. 184; 7 Lawyers' Ed. 825, a bill was filed to compel a partner in a contract for a public work, in which a public agent was to participate, to account. The court held that:

"To state such a case is to decide it. Public morals, public justice, and the well established principles of all judicial tribunals alike, forbid the interposition of courts of justice to lend their aid to principles like this."

We need not enlarge upon this question further

than to call attention to the following additional authorities:

Primeau vs. Granfield, 193 Fed. 911, certiorari denied, 225 U. S. 708 (no accounting between parties to scheme to sell worthless mining stock to innocent investors).

Reed vs. Johnson, 27 Wash. 42.

Creath's Administrator vs. Sims, 5 How. 192; 12 L. Ed. 111.

Logan vs. Insurance Co., 146 N. Y. S. 678, App. Div. (Loan of securities to insurance company to deceive insurance commissioner).

White vs. Cuthbert, 41 N. Y. S. 818 (App. Div.)

THE \$36,550 ITEM SUBJECT TO VARIOUS CONSTRUCTIONS.

Our opponents make much of the charging of the \$36,550 of Hays' paper to the Olympia bank, treating it as a payment by Hays of his individual obligations out of bank funds. We ourselves regard it as did the trial court, as a cancellation of a previous fraudulent unauthorized and *ultra vires* credit. As stated by the trial judge (Tr. 206):

"* * * the future establishment and financing of another bank was such an extraordinary transaction as—when so secretly engineered by Gilchrist, to constitute a fraud upon the United States National Bank and other directors."

The trial judge then cites the statute requiring that the capital stock be paid in cash, and that such payment be certified under oath by the president, treas-

urer, or secretary of the newly organized institution, and says:

"No part of this disputed item was ever paid in cash. What is claimed is that a credit was obtained in the United States National Bank for Hays' note, that is, a promise to pay cash on demand, which promise was, as the court has found, saddled with an agreement that Hays would, upon demand, charge off the credit given the Olympia Bank & Trust Company.

The court found, upon the trial, in effect, that the \$36,550 stock subscribed by Hays was, in no sense, paid, because the credit to the Olympia Bank & Trust Company, colorably given on account thereof upon the books of the United States National Bank, was secretly and fraudulently pledged, by agreement between Hays and Gilchrist, from the beginning. The fund represented by this colorable credit was, at all times, in the control and keeping of Gilchrist, as an officer of the United States Natinoal Bank, and Hays agreed to the charging off of this colorable credit at any time, which agreement he performed upon demand of Gilchrist, by giving drafts to that amount.

"* * *

"As Gilchrist was first vice-president and manager of the United States National Bank, counsel, in their petition for a rehearing, demand how it is that Dysart, the second vice-president, could assume to command Gilchrist to obtain from Hays drafts against this colorable credit, or otherwise secure its relinquishment. The only answer to that is that it must have been the righteousness of his cause for 'Doubly armed is he who has his quarrel just.'

"If this credit had been more than colorable, such action upon the part of Dysart would have been reprehensible; but the court finds that it was not. The giving of the draft was but an effort

to remove a cloud created in fraud upon the funds of the United States National Bank."

It will be observed from the foregoing that the court below, who had the advantage of observing the demeanor of the various witnesses throughout the long trial, found not only a fraud against the United States National Bank which vitiated the paper credit of \$48,000, but also an agreement or condition attached to the credit, which amounted substantially to a pledge of the credit as security for the debt through which it arose. Such an agreement is far from unusual in banking transactions. Another instance of it appears in this record in relation to the \$5,000 Hays note. Frequently a loan is made under the condition that a certain proportion of the proceeds shall remain constantly on deposit with the loaning bank, and shall be subject at any time to be charged against the principal obligation. Borrowing on the capital stock does not, however, operate as payment of the stock in cash, and unless the officers of the Olympia bank had made certificate under oath that the entire stock had been paid in cash, the Olympia bank could never have commenced business. (Tr. 207.) The suggestion is made by our opponents that this was in some manner done by Gilchrist and Daubney. The statute is clear, however, that such certificate can only be furnished by the officers of the newly organized bank in their official capacity. There is no evidence that the affidavit

frequently referred to by our opponents as a certificate of deposit, signed by Daubney, was ever used in any manner whatever, or that it was ever seen by anyone except Gilchrist, Hays and Daubney.

This an Attempt to Enforce an Executory Agreement.

Admittedly the pretended credit of \$50,000 was never actually withdrawn or attempted or permitted to be withdrawn. There was then in fact not a loan or advance, but at most a mere agreement or attempted agreement to make a loan. If such a thing may be enforced against a national bank there is no limit to the hazards to which national bank capital and national bank deposits may be subjected. A score of newly organized concerns may turn up at once saying that a reckless or dishonest bank officer has agreed to advance them enormous credits upon their capital stock. There is no limit to the thing, and distinction between an *ultra vires* underwriting or loan of credit by a national bank and the ordinary loan or discount of paper must be based on the *real nature of the transaction, as distinguished from its form*. If this transaction was a *bona fide* discount of Hays' paper by our bank in the ordinary course of business, it should stand. If an attempt to have the United States National Bank secretly finance the Olympia Bank & Trust Company, it must fall.

THE \$48,000 FALSE CREDIT—SUMMARY.

Looking at the matter in a broad way, it seems to us that there are two possible conclusions as to the real nature of the transaction between the two banks by which the wrongful credit of \$48,000 was attempted to be given:

1. It may be considered that Hays, as he himself says, was known to his directors and fellow-promoters not to be putting up actual money for his stock, and that he was directly or indirectly authorized by them to effect substantially the arrangement that he did effect for a temporary credit in anticipation of the promoters being able to collect payment for the stock in behalf of the Olympia bank from other persons who had agreed or expressed some willingness to take it. Should the court adopt this view, there would seem to be no room for debate as to the credit being fraudulent and void as against appellees.

2. It may be considered that the directors of the Olympia bank, without making inquiries as to Hays' financial responsibility or even looking up his commercial rating (Supp. Tr 334), believed that he would and supposed that he did pay out of his own funds substantially the entire capital stock of the Olympia Bank & Trust Company. As against this hypothesis must be considered, first, the fact that the complete and absolutely illegal underwriting of the stock of the Olympia

bank by appellee bank appeared on the face of the books of the Olympia Bank & Trust Company, and was admittedly known to several of the directors, as well as fully open to the inspection of all. It seems impossible to suppose that in a small community like Olympia such a fact, known to Reinhart and Cavanaugh, who are shown to have been the friends if not the intimates of the other directors, should not have been known to all. The original minute book of the corporation which might lend some assistance in this connection is strangely missing, and we have only a copy of the minutes of a single meeting.

Having in mind the foregoing, as well as the testimony of Hays that at or immediately after the transaction Mr. Howell congratulated him on bringing his negotiations with Gilchrist to fruition (testimony which Mr. Howell does not take the stand to contradict); and that Hays, appellants' witness, testifies very positively that he informed several members of the board what he was doing, we submit that no court should reverse the finding of the trial judge to the effect that the Olympia bank itself, as distinguished from Hays, is at least as much at fault as appellee bank, and that its receiver and stockholders are not in a position to recover on account of this transaction in a court of equity.

But even assuming a finding that the directors of the Olympia bank put such blind confidence in Hays

that they never even inquired as to whether he had paid in his enormous stock subscription, which their own record shows they knew was not all made in his own behalf (Supp. Tr. 188), and assuming that they closed their eyes to the plain record of this illegal source of credit as it appeared upon their own books, no concealment of which was made (Supp. Tr. 251, 252), we say that it seems impossible that this corporation, or its stockholders and directors, can be relieved from a finding of gross neglect of duty, and we submit that upon the facts shown, they are charged with and estopped to deny knowledge of the facts which they could so easily have obtained.

INTERVENORS HAVE NO RIGHT TO BE
HEARD AND THE ACTION SHOULD BE
DISMISSED AS AGAINST THEM.

The petition of the intervenors appears to us quite anomalous and improper. Here is a suit brought by one claiming to be receiver of a corporation. With somewhat naive frankness the intervenors say that they intervened in the case and presented their intervening petition *that the court might consider certain claims which were deemed inconsistent with plaintiff's cause of action!* (Intervenor's Brief, p. 3.)

In other words, the following is the situation: The officer appointed to administer the estate of this insol-

vent bank being put to an election of remedies or having choice as to the affirmance or disaffirmance of certain transactions, elects to seek certain remedies and brings an action. Can the court tolerate for a moment the idea that any stockholder who conceives that his private interests or the interests of the estate would be subserved by a different election or by the pursuit of inconsistent remedies by the receiver is at liberty to intervene as a party plaintiff in the cause and demand that the defendant answer his complaint and defend against a different claim? If stockholders possess such a right after insolvency of the corporation can they not equally claim the same privilege while the corporation is actively engaged in business? The thing seems to us an absurdity and one which if given countenance by this court would result in intolerable confusion in future litigation.

There is no showing of any reason or necessity for the intervention of the intervenors of this suit. The insolvent bank was represented by its receiver, who at the time of his appointment, at least, was the properly constituted officer, under the State Law, for the bringing of such suits.

It is made the duty of the receiver of the bank under Rem. and Bal., Sec. 3305, under which Plaintiff was appointed:

“To wind up the affairs and business thereof

for the benefit of its *depositors, creditors, and stockholders.*"

The receiver is thus made expressly, by statute, the representative of the stockholders, as well as of the creditors of the bank, and the statute does not contemplate that each stockholder shall come in and represent himself. The intervenors are therefore barred by this fact, as well as by their unclean hands, from asserting any of the claims which they now attempt to set up.

In *Wenar vs. Schwartz*, 44 So. 902 (La.), a stockholder intervened in opposition to the claim of a creditor against a corporation which was in the hands of a receiver. The court held that the stockholder had no right to intervene, upon the ground, among others, that:

"Where a corporation is in the hands of a receiver and hopelessly insolvent, one of its stockholders has no interest and no standing for interfering in the judicial settlement of its affairs."

Nor does the termination of the receiver's powers by the statute of 1915, referred to on p. — *post*, if such is the effect of the statute operate to authorize the maintenance of this action by the intervenors. It merely substitutes the State Bank Examiner as liquidating agent, and rests all powers in him.

We pray that the decree be affirmed as against the intervenors, with costs, upon the simple ground that they have no standing before the Court in this suit.

*The Inequity of Further Recovery in This Cause by
Plaintiff.*

Perhaps the action of plaintiff in voluntarily calling in additional counsel to represent both plaintiff and intervenors and in stating to the Court that there was no issue or dispute between intervenors and plaintiff (Supp. Tr. 4) may first suggest that this action is in reality being prosecuted not for depositors of the Olympia Bank, but for the profit of these intervenors, who, having paid not one dollar for their stock in this bank, now so loudly assert their right to recover something.

Appellee's solicitor stated to the court in the course of the trial (Supp. Tr. 280):

"I want to show that in reality it is practically only the stockholders or principally the stockholders that are interested here, that this isn't an attempt to recover for the benefit of the creditors of the Olympia Bank, but is an attempt by these stockholders, either directly or through the receiver for their benefit, to recover money which they have no equity in and have no right and are not entitled to."

The record shows (Tr. 71, Supp. Tr. 279) that the total deposits of the Olympia Bank and Trust Company at the time of its failure amounted to about \$44,000, and shows that of this amount about \$30,000 was state deposits and that these have been fully repaid (Supp. Tr. 279, 280). It shows that on the remainder, dividends of ten per cent had been paid at

the time of the trial in the Court below (Supp. Tr. 279). The recovery of the plaintiff in the trial court in this cause was \$25,998.91.

Intervenors in their brief (p. 51) state that the appellee bank is paying its creditors 50 cents on the dollar or thereabouts. Our own estimate is considerably in excess of this percentage, but even on that basis it appears that the amount available in the hands of the receiver, including cash on hand and unrealized resources, recovery from the State Bank of Tenino amounting to \$10,000, recovery under the judgment of the Trial Court in this cause, and *even without* any recovery upon the surrendered notes of the intervenors, will far more than pay all creditors of the Olympia Bank & Trust Company in full, leaving a substantial balance for the stockholders of that institution.

Neither Intervenors nor the Olympia Bank & Trust Company Come Into This Court With Clean Hands.

In Intervenor's Brief (p. 13 and 14) is set forth the statute under which the Olympia Bank & Trust Company was attempted to be organied, which provides:

First, That the capital shall be *paid in cash* before the company shall be authorized to transact any business.

Second, That payment of the entire capital stock

in cash shall be certified to the bank examiner under oath by the president and treasurer or secretary of the bank which is being organized.

Third, That before the corporation shall be authorized to transact business other than such as relates to its formation and organization the bank examiner shall ascertain whether the requisite capital has been fully paid in cash, and if it appears that such capital stock has not been paid in cash the certificate of organization shall not be granted, and such corporation shall not commence business until such certificate of incorporation has been granted.

Fourth, That when the certificate of authority is issued by the bank examiner the persons named in the articles of incorporation and their successors shall thereby and thereupon become a corporation * * *

Under these provisions it seems plain that the Olympia Bank & Trust Company was never lawfully incorporated and that such certificate as it obtained, purporting to authorize it to commence business, could only have been procured through the making of an affidavit by the intervenors, Reinhart and Shaffer, as president and secretary, respectively, that the capital stock had been paid in cash. Both Mr. Reinhart and Mr. Shaffer testified that they never even inquired whether any considerable part of the capital stock had been paid in (Supp. Tr. 178, 242), and didn't know whether it had been paid in (Supp. Tr. 180). Howell,

the Vice-President, says he made no inquiry whether it had been paid, and considered it none of his business (Supp. Tr. 323), and all admit that they had themselves paid no cash for their stock and that they never have paid for it to this day. (Supp. Tr. 327, 276, 180).

Admittedly, the appellant receiver now has the stock of the Olympia Bank & Trust Company to represent which Mr. Gilchrist undertook to give the Olympia Bank & Trust Company a sham credit (Supp. Tr. 438). The inequity of appellants' position from several points of view is thus plain. Is the thought to be tolerated that upon the facts shown in this record, stockholders who have actively organized a bank without capital in the teeth of the statute, and who by their utter negligence and disregard of the obligations placed upon them by law, have made possible the fraud through which all others have suffered, should recover the amount of a fraudulent and sham credit from a receiver representing the depositors of a bank whose directors never knew of or assented to the transaction?

The principal "stockholder," "Friend" Hays, admits on the stand his fraudulent conduct. And he has paid as much for his stock as any of the others, with the solitary exceptions of the bookkeeper and one other trustee. That in such a case the corporation itself is cut off from recovery in a court of equity is indicated by the authorities cited hereafter.

To state the case of these intervenors would seem to be to decide it. Both upon principle and authority, they are without standing in any court. They are not stockholders and have none of the rights of stockholders.

A case entirely in point upon this question is *Hinckley vs. Pfister*, 53 N. W. 21 (Wisconsin).

A statute of Wisconsin provided that stock must be fully paid for "to the amount of its par value." The plaintiff brought this action against the corporation and others, asking for a receiver and other relief, predicated upon his right upon his position as a stockholder, as well as asserting claims as a creditor. He also sought the cancellation of certain bonds of the corporation which were issued without the value which the statute required being given. As to plaintiff's right to the cancellation of these bonds, the Court says:

"Besides, both the corporation and Hinckley, as its President, participated in the unlawful issue of them, and occupy no position to ask the intervention of a court of equity, for they could neither of them make out a title to relief, except by showing a plain and positive violation of the statute. They are in equal wrong with Pfister, the party to whom the bonds were issued. *Clarke v. Lumber Co.*, 59 Wis. 655, 18 N. W. Rep. 492, and cases there cited. The law will leave the parties as they are, affording a remedy to neither."

As to plaintiff's standing as a *stockholder*, the court says:

“In this view of the case, the plaintiff’s stock, as well as that issued to Hinsey and others, falls under the condemnation of section 1753, *and is void, as not having been fully paid for ‘to the amount of its par value,’ so that neither of them can make any claim by means of or through it to the aid or protection of a court of equity as against the other, based upon the rights of a stockholder.*”

Another case bearing directly upon this question is *Arkansas River Land Company vs. Farmers’ Loan & Trust Company*, 22 Pacific 954 (Colorado). In this case certain alleged stockholders in a corporation brought a suit against it and other parties, to restrain the carrying out of a contract by the corporation with the other defendants. None of the plaintiffs had paid anything for their stock.

The Court states the question presented thus:

“The naked question presented is whether these parties, as holders of 4,000 shares of fictitious capital stock, are shareholders of the company, and in a position to entitle them to be heard in a court of equity.”

And again on the same page:

“Plaintiffs could maintain this action only by showing that they were shareholders, and vested with contract rights, of which the stock certificates issued to them were the evidence, which they could enforce against the corporation itself. This they have utterly failed to do. On the contrary, by the express allegations of the complaint *it appears that they acquired the stock, not only in fraud of the rights of the corporation, but in express violation of the constitutional mandate of the state, and*

of the provisions of the law under which the corporation was organized. The stock held by them is fictitious, within the meaning of the constitution, and no rights can be predicated upon it, either in law or in equity."

And again on the same page:

"They ask for an accounting, yet it does not appear that they or either of them ever expended a dollar which would constitute a legitimate claim against the corporation, or against the defendant. They ask that the bonds and the trust-deed be declared void, yet, by their own admissions, their interest in the corporate property is merely nominal. Throughout the whole of this extraordinary record of fraud and violation of law in the administration of the affairs of this corporation these parties appear first as promoters, and at all times as active participants in every illegal transaction. Counsel for plaintiff in error states in his brief that the court below dismissed the bill because *ex turpi causa non oritur actio*. The maxim was well and aptly applied. The judgment should be affirmed."

In Minor vs. The Mechanics Bank, 26 U. S., 46, 7 L. Ed. 47, the Court says, referring to a subscription to bank stock fraudulently made:

"If the subscription were fraudulently made, with a view to evade the provisions of the charter, the law will hold the parties bound by their subscriptions, and compellable to comply with all the terms and responsibilities imposed upon them, in the same manner as if they were bona fide subscribers. It will not make the subscription itself a nullity, but it will deprive the subscribers of the power of availing themselves of the same."

We need not amplify citations on this point, but refer to *Clarke vs. Lincoln Lumber Company*, 18 N.

W. 492 (Wis.); 3 *Cook on Corporations*, 7th Ed., Sec. 735; *Coddington vs. Canaday*, 61 N. E. 567 (Ind).

This case holds, if authority be needed upon the point, that the acceptance by directors of *notes*, in payment of capital stock of a bank, is such misconduct as to render the directors liable to the bank's receiver.

Observe that these intervenors in the case at bar were also directors and officers of the Olympia Bank. The intervenors and other officers and trustees would appear in more nearly their proper capacity, as *defendants* in a suit by the receiver of their bank to recover against them for their negligence—to use the very mildest term—in mismanaging the corporation and taking worthless notes in payment of stock subscriptions, than as plaintiffs, attempting to make their own violation of the law the basis of this speculative endeavor to enrich themselves at the expense of Receiver Titlow's three thousand impoverished creditors.

In *Moses vs. Ocoee Bank*, 69 Tenn. 398, the court says: "This mode of transacting banking business (namely, accepting notes for stock, and similar misconduct) can have no countenance or recognition from the courts."

And the intervenors cannot conceal their own lack of equity by pretending to act here in the name of, or

on behalf of the corporation or other stockholders. The authorities already cited are sufficient on this point, but in passing we desire to call attention to the case of

Home Fire Insurance Co. vs. Barber, 93 N. W. 1024, Neb.,

holding that if corporate stockholders have no standing in equity to entitle them to relief in their own name, they cannot obtain such relief in the corporation's name, and, further, that if all of the stockholders are without standing in equity, *the corporation is also without standing, since in equity the court will not forget that the stockholders are the real and substantial beneficiaries of a recovery by the corporation.*

Applying these principles to the case at bar, it appears that the holders of \$48,000 out of \$50,000 of the stock of this corporation, paid nothing whatever, and that all of the stockholders were cognizant of, or at least fully charged with knowledge of the illegal and fraudulent character of the incorporation. One of the two stockholders who paid a small amount of cash (Cavanaugh) was the assistant cashier (Supp. Tr. 246) and a director (Tr. 94) and the other (Jones) was *chairman of the board of directors* (Supp. Tr. 189). If there was ever a case where a corporation or its stockholders were without standing to complain of a transaction in which the corporation was involved, it is this case.

*Olympia Stockholders Would Take Out the Mote From
Their Brother's Eye.*

It is interesting and curious to observe the earnestness with which appellants complain that the directors of the United States National Bank should be charged with notice of this fraud through the entry on their books of a credit to the Olympia bank while they are shocked that any one should suggest either knowledge or negligence on the part of any of the Olympia directors or officers.

Let us test this broad distinction and see whether in fact these Olympia gentlemen are justified in attempting to place all the blame on the directors of the National bank and none upon themselves.

Is the fraudulent transaction then plainly set forth on the books of our bank and concealed on the books of Receiver McKinney's institution? Let us see. On page 157 of the Transcript of Record we find a copy of the entries on the books of the Olympia Bank with receiver's notations thereon. Here appears a charge to the United States National Bank, not of cash, not of a "remittance," not an entry in any way ambiguous or susceptible of misinterpretation, but in plain language *a charge of the entire capital and surplus of the Olympia institution to our bank* as follows:

"Capital and Undivided Profits \$55,000."

Mr. Reinhart, president of the bank and intervenor herein, is asked (Supp. Tr. 242):

“Q. You are familiar, however, with the fact that the books do show that the capital stock of the bank was charged up to the United States National Bank of Centralia.

A. Why, I understood that is the fact, yes.”

Director and Assistant Treasurer Cavanaugh is asked as follows (Supp. Tr. 251):

“Q. You knew then from the entries which you were making that you were getting credit from the United States National Bank for the capital stock of the Olympia bank.

A. Yes, sir.

Q. But you did not know of any real money coming in from any source in payment of the capital stock, did you?

A. Not except that which I, myself, paid in and that Mr. Jones paid in.

Q. That amounted in all to about \$2,000?

A. Yes, subsequent to that there was other payments.”

(The latter were of trifling amount and are credited to appellee by Olympia Bank & Trust Company.)

Your Honors might well perhaps have assumed that at least the corporate records of the Olympia bank are in perfect and regular form and were produced to sustain the transaction, but strangely enough it appears that the entire corporate minute book has been lost (Supp. Tr. 187, 201, 452). Though he thinks there were several, perhaps six, meetings of the board

of trustees of which no minutes whatever are produced, Mr. Shaffer, the Secretary of the Olympia bank, says that he "hasn't the best memory in the world" and that he does not remember a single thing that occurred at the other meetings (Supp. Tr. 191) and Hays is compelled to admit that he has previously testified that about the time or shortly after organization of the Olympia bank he had a conversation with Mr. Howell, its Vice President, and a member of its Board of Trustees, in relation to his negotiations with Mr. Gilchrist; that the conversation occurred in the bank shortly after the organization and that the substance of it was that in the matter of the negotiations with Mr. Gilchrist, Mr. Howell congratulated the witness for bringing it to a fruition (Supp. Tr. 601, 602, 603).

No record of the fraud on appellee's books.

Now not only is there not a line of evidence even tending to bring home guilty knowledge of this transaction to any member of the board, officers or employee of appellee bank except the two misguided and guilty officers who conspired with Mr. Hays, but it appears that the only entry on its books with reference to the transaction was that copied into the statement appearing on page 158 of the printed transcript of record, viz., *August 20, R. \$48,000.00*. "R" stands for remittance (Supp. Tr. 108). Even the Hays' notes were not put in the note pouch but were evidently concealed

by Mr. Gilchrist until he returned them to Mr. Hays September 15th. One of them Mr. Gilchrist says he "charged to the Union Trust Company," but this was evidently a mistake. The account shows that neither the Union Trust Company nor anyone else was charged with this note on the books until the notes were charged back in the form of credits on the Olympia bank's draft which cancelled the principal part of the original false credit of \$48,000. Then both the notes were returned to Olympia (Supp. Tr. 567).

THE OLYMPIA BANK'S TENINO TRANSACTION.

The facts in regard to this transaction, which constitutes receiver McKinney's second cause of action, are simple.

W. Dean Hays, cashier of the Olympia Bank & Trust Company, was also vice-president (Tr. 97) and cashier and principal owner of the State Bank of Tenino (Supp. Tr. 61, 118). He entered into an agreement with Gilchrist, the Vice-President of the U. S. National Bank, under which Gilchrist intended or had the option (Tr. 76, middle of page) to buy Hays' interest in the Tenino bank. This transaction had not been consummated, however. Nothing had been paid on account of it (Tr. 76), and it was, in fact, never carried out (Supp. Tr. 135). But Hays had borrowed

money of the U. S. National Bank through the Tenino bank (Tr. 120, 78).

As to whether a balancing of accounts at that time would have shown an indebtedness in favor of the Tenino bank as against our U. S. National bank or vice versa is in dispute. The witness who seems to be regarded by all parties as most reliable, Mr. George Dysart, however, says that the Tenino bank was then in debt to the U. S. National Bank (Supp. Tr. 461). Gilchrist says the Tenino bank at any rate did not have to their credit an amount equal to the sum demanded (Supp. Tr. p. 532, line 28). And it elsewhere appears that the account was overdrawn at about this time (Supp. Tr. 513). Under these conditions it appears that Mr. Blumauer, acting manager of the Tenino bank, telephoned to Mr. Dysart and Mr. Gilchrist, Vice-Presidents of our bank at Centralia, and stated that the Tenino bank was greatly in need of funds, not having sufficient cash to meet the demands upon it even for a day. Mr. Blumauer says that he asked Gilchrist for funds and that Gilchrist said that he would take it up with Mr. Hays and have Mr. Hays take care of it (Tr. p. 84). The items were in fact charged to us in the Olympia Bank's ledger, which plaintiff admits was found utterly unreliable (Supp. Tr. 44, l. 29), but were not so charged on the Olympia Bank's books of original entry and do not appear in any manner on the books of the U. S. National Bank.

Receiver McKinney testifies (Supp. tr. p. 44):

"A. * * * What I meant is, there is nothing; there has never been any account opened with the State Bank of Tenino at all, and they really have not charged anything to them, *but the transactions there of course show that we did send some money to Tenino and should probably have a credit for it*, but, as I say, those items were charged to Centralia."

"Q. Then, really, all you could say about it would be that there was not a *ledger account* opened with the Tenino bank, and no *ledger charge* made?"

A. Yes, that is what I meant to say, meant for you to understand.

Q. Then, isn't it a fact, Mr. McKinney, getting right down to the meat of it, *you found the books of the Olympia bank in such rotten shape that you re-wrote all the books that could be re-written?*

A. *In the ledger I didn't use the accounts here [there] at all.*

Q. *That is because you found them in such bad shape you couldn't put any dependence on them?*

A. *Yes, I took my records from the cash book entirely."*

In other words, Receiver McKinney himself says that the original entries, which he found reliable, showed this as an apparent charge to Tenino, while only an utterly unreliable ledger, kept by Hays, showed these items as charged to us.

Plaintiff, himself a banker, says on this point (Supp. Tr. p. 39):

"Q. You do not find, do you, Mr. McKinney,

in the books and records of the Olympia bank anything justifying the finding or the charge of any of those Tenino accounts against the United States National Bank?

A. On the books of the Olympia Bank & Trust Company?

Q. You find nothing that would justify from the books,——

A. There is nothing on my records to show that they should be charged to Centralia.

Q. Or anywhere else that you know of?

A. No, sir. I might modify that a little bit, only that they were charged by Mr. Hays on the books to Centralia. I would change that answer a little bit.

Q. *You don't find anything such as you would ordinarily find in the records of a bank, such as would ordinarily exist before the proper charge could be made, to justify such charges?*

A. No.

Q. *On the contrary, such records as you find indicate that those items should be charged to the Tenino bank, Seattle bank, and not to the Centralia bank?*

A. *Tenino bank."*

On re-examination by his own counsel, Mr. McKinney says (Supp. Tr. p. 40):

"BY MR. TROY: In answering counsel as you have, have you taken into account the correspondence you testified to in your direct examination, the various letters that you referred to, and receipts?

A. Yes, for those three items I think I have. They do not connect the Centralia bank with the——there is nothing there to show that I can see connecting them up directly.

BY THE COURT: That refers to the \$10,000?

A. Yes, sir, the three items."

Mr. Hays testifies :

First. That Gilchrist told him to charge one of the \$2,000.00 remittances to him (Supp. Tr. p. 100). This is misstated in the transcript, p. 74, so as to make witness say that Mr. Gilchrist told him to charge the United States National Bank. We think Mr. Hays seems a little uncertain about this, though, for on p. 103 Supp. Tr. he is asked: Q. "You said he called you up on the morning of the 19th, then, that must have been a mistake." A. "I don't know. I know he called me up every day, not all the time. I don't know about this transaction though." On cross-examination, however, *Hays squarely admits that Gilchrist did not tell him to charge the item in any particular way*, finally stating the matter as follows (Supp. Tr. 147):

"Q. Now, turning a moment to the Tenino transaction, Mr. Hays, did you from time to time, or at any time, receive any telephone communication from Mr. Gilchrist regarding sending funds to Tenino?

A. I did.

Q. Those were simply calls on the 'phone from you to Mr. Gilchrist under the situation which you have already explained as to your various relations with Gilchrist and with the Tenino bank?

A. Yes, sir.

Q. In which Gilchrist told you that it was necessary that you send some money to Tenino?

A. Yes.

Q. *He didn't undertake to tell you how you should do it or from what funds you should do it, or how or who you should charge it to, but simply*

said there was so much needed by Tenino at that time, is that it?

A. *Yes, sir.*"

Mr. Gilchrist makes the whole matter clear as follows (Supp. Tr. 489, 490) (Cf. Tr. 130):

"* * * Mr. Blumauer called up, as he did frequently in connection with their affairs, called attention to the fact that their drafts were going to protest in Seattle and it was absolutely necessary that finances be transferred there to cover. I told him that I would take the matter up with Mr. W. Dean Hays and called his attention to the necessity of protesting those drafts immediately. I called Mr. Hays on the phone and told him of the situation and told him to — it was "*up to him*" to see that those drafts were protected and at once, and he apparently sent the remittance referred to to Seattle and *charged it to the United States National Bank of Centralia without any authority from us whatever.*

Q. Is that all you know of the Six Thousand Dollar transaction?

A. That is all I recall.

Q. Then please state, Mr. Gilchrist, everything that you know regarding each of the two Two Thousand Dollar transactions with the Tenino bank.

A. The other two transactions were practically similar."

Your honors will note that the summary of this testimony (Tr. 114) omits the vital parts:

(a) That witness told Hays, "it was up to him to see that those drafts were protected";

(b) That Hays charged the remittance to the

Centralia bank "without any authority from us whatever."

George Dysart, a member of the Washington Bar of high standing and one of the innocent directors of the United States National Bank, testifies (Supp. Tr. 460):

Q. Do you know, Mr. Dysart, anything of any transactions of the United States National Bank with the Bank of Tenino?

A. Well, I know of one.

Q. Do you know anything of a \$2,000 transaction which has been referred to in evidence already given in this trial?

A. Yes, sir.

BY MR. OWINGS: Now, I would like to know what \$2,000 you refer to?

BY MR. GOODALE: We will bring it out as soon as the witness can answer.

Q. What is the transaction you refer to?

A. The morning of September 18, 1914, it was Friday morning, I was in the United States National Bank with the United States National Bank Examiner, Mr. Mult, and I got a 'phone call from the State Bank of Tenino. Mr. Isaac Blu-mauer was talking. He said that he didn't have enough to run on during the day. I asked him if he was taking deposits and he said he was, and I said, 'You are going to have trouble if you can't take care of your business and are taking in deposits.' He wanted \$2,000 sent down, and I didn't know the relations between the two banks, and I asked Mr. Mult and he said, 'They are into us enough now. Don't send them any more money.'

BY MR. VANCE: I object to this conversation with other people when we were not present.

BY THE COURT: The objection may be overruled.

BY MR. VANCE: Exception.

A. I then told Mr. Blumauer that we couldn't send any money and wouldn't send him any; *that he should call up Mr. Hays; that it was his bank, and for him to look after it.* I didn't see Mr. Blumauer until about five o'clock that night. He came down and I asked him how he got through, and he said that he called up Mr. Hays and told him the condition it was in and he said he would immediately send him \$2,000. * * *

Q. You never in any manner requested that any funds be sent from the Olympia Bank to the Tenino bank?

A. Never did."

Even Mr. Blumauer, whose animus is evidently strongly against appellee, says as to those charges (Supp. Tr. p. 117, line 13):

"I had to credit it to one or the other (the Olympia bank or the United States National Bank) without any instructions. I knew it would be straightened out between Mr. Gilchrist and Mr. Hays."

While Receiver Langley, of the Tenino bank, testifies (Supp. Tr. 54):

"Q. Well, I simply wanted to know if there was anything on the face of the record anywhere to indicate the connection of the U. S. National with this \$2,000 item on the 19th inst. that you found.

A. No, sir."

Such entries as are made by the Tenino to the credit of U. S. National in this connection Langley explains may readily have been caused by *Hays*, for his own purpose (Supp. Tr. 59).

On this testimony we are content to submit the issue of the remittance to Tenino to the Court without further argument.

Admittedly, there was every reason why Mr. Hays, as principal owner of the Tenino Bank should individually supply funds to meet its needs.

Admittedly, the United States National Bank by its Vice-President, Mr. Dysart, refused to send funds.

Admittedly, funds were sent by the Olympia Bank through the action, rightful or wrongful, of Mr. Hays, its cashier.

Admittedly, this action was taken without other request from Mr. Gilchrist than a telephone demand.

Admittedly, the U. S. National never sent a letter of confirmation, such as would have been customary if the remittance had been requested on the credit of that bank.

Admittedly, the Olympia Bank never notified the United States National Bank that it was even attempting to charge the Tenino remittance to it (Supp. Tr. 36, 37, 149, l. 15), though confirmation or report of such charges is universally customary.

Neither such remittances nor any charge against the United States National Bank on account of them were mentioned in letters sent by the Olympia Bank to the United States National on the very day of such

transfer, though other transactions of that day are set forth (Supp. Tr. 36, 37).

Hays finally says that Gilchrist simply asked him to remit without telling him to charge the item either to the Tenino Bank, to the United States National Bank, to Mr. Hays, himself, or to Mr. Gilchrist, and Gilchrist testified squarely *that he told Hays, as did Dysart, that the matter was "up to him" and that he, Hays, individually would have to look after the needs of the Tenino Bank* (Supp. Tr. 490, 534).

We submit that the decree of the Trial Court was right and that the only finding justified by the foregoing evidence is that the United States National Bank never authorized the Tenino remittances to be charged to it and that Hays, conscious that such was the case, concealed from appellee bank the fact that in the Olympia Bank ledger he was entering these items to our debit for the purpose of misleading his own board of trustees regarding the remittances which he was making for his own personal benefit as owner of the Tenino Bank.

ARGUMENT ON THE APPEAL OF LANGLEY, RECEIVER OF STATE BANK OF TENINO.

The question of the power of this receiver to maintain the present action is elsewhere discussed (p. 83). We will now take up in detail the facts involved in

Langley's appeal. There are two transactions, or rather series of transactions, to be considered. They are:

(a) The matter of the Blumauer Lumber Company drafts.

(b) The W. Dean Hays five thousand dollar note.

We will discuss these in order.

(a)

The Blumauer Lumber Company Drafts.

The appellant finds it difficult to find grounds upon which to base a complaint with respect to the ruling of the lower court upon this matter. The facts as presented even by the appellant are, we believe, sufficient to answer in the affirmative the query, stated on page 62 of appellant's brief, as to whether the facts as stated by him are as a matter of law sufficient to release the United States National Bank from liability. We call attention, however, to a few additional facts.

The Blumauer Lumber Company was a borrower from the Tenino Bank (Tr. 88) as well as from the United States National Bank. Mr. Gilchrist testifies (Tr. 115) that the State Bank of Tenino arranged for a line of credit with the Merchants' National Bank of Portland, covering three or four thousand dollars, by putting up notes of the Blumauer Lumber Co. This was rediscounted paper *and the Tenino Bank was liable*

on it, presumably as endorser (Supp. Tr. 560). When these notes became due the Merchants' National Bank was insistent that they be taken up. The plan was then devised (Tr. 116), of paying a part of the account and renewing the balance. Various drafts, aggregating \$2,500, were sent by the Tenino bank to the Portland bank, drawn upon the United States National. Gilchrist was to "protect the drafts when they came in, in the ordinary course of business notwithstanding their account at that time, and *that is the only connection witness had with the transaction*" (Tr. 116). Gilchrist testifies (Tr. 116) that he was aware of the fact "that there had been permitted for a long time by the State Bank of Tenino a large loan of credit, and by the Blumauer Lumber Company for whose benefit those particular drafts were issued, and that there was a business relationship there with the State Bank of Tenino by which they seemed ready to extend a large amount of credit."

The drafts which were issued were in the ordinary form (Tr. 116). They directed Centralia to pay Portland and charge Tenino (Supp. Tr. 397, 398). *They therefore constituted upon their face an authorization from the Tenino bank to the Centralia bank for the latter to charge the Tenino bank's account with the amount of the drafts, and that was what was in fact done.* Three of them were executed by Mr. Blumauer

as president of the Tenino bank and the other one by Mr. Hays as cashier (Tr. 85). Surely it would require clear and satisfactory testimony to vary this written authorization from the Tenino bank, yet there is nothing to contradict the plain tenor of the drafts except the vague and uncertain statements and "understandings" of Hays and Blumauer (Tr. 85) that the United States National Bank was in some way to "stand behind" the Tenino bank in the transaction (Tr. 98). Observe that these drafts *were in payment of Tenino's own indebtedness to Portland* (Supp. Tr. 580).

Mr. Gilchrists' testimony is very clear to the effect that there was no agreement on his part that this additional \$2,500 of Blumauer indebtedness should be saddled onto the United States National Bank. He had a very good reason for not wishing to carry this additional indebtedness in that the Blumauer Lumber Company was then indebted to the United States National Bank up to the legal limit (Tr. 85). He would therefore have every reason for wishing to avoid making any further loans, either directly or indirectly, to the Blumauer Company. We are quite unable to see the fraud which the appellant contends the court must find in order to support Gilchrist's version of the transaction.

It seems thus that the fraud would be imputed

rather by accepting appellant's version of the transaction, for appellant argues that the parties colluded to deceive the bank examiner and effect a fraud upon the laws of the United States relative to excessive loans, by making an excessive loan, but concealing it in such a way that it would seem to be the indebtedness of the Tenino bank.

We have to consider the testimony only of Gilchrist and Blumauer in regard to these drafts. The incompetency of Hays' testimony is disclosed by the following, occurring on p. 395 of the Supplemental Transcript, but omitted from the printed transcript:

"Q. (By Mr. Owings) Well, was there any arrangement whereby the United States National was to really stand behind this draft?

A. Yes, sir.

Q. Or do you know about that of your own knowledge? Did you have a discussion with Mr. Gilchrist or any of the officers of the bank in regard to it?

A. No.

Q. Whatever information you have in regard came through Mr. Blumauer?

A. Yes."

We have here presented then only such inconsistencies as Blumauer's and Gilchrist's testimony may show. Gilchrist is sustained by the drafts themselves and, as it seems to us, by all the probabilities of the case.

We do not find, however, any necessary irreconcilability between the versions of Blumauer upon the

one side and Gilchrist upon the other. Blumauer testifies (Tr. 85), "Mr. Gilchrist said he would take care of this loan." Blumauer was "to issue drafts on Centralia and Gilchrist was to take care of them" (Tr. 84). Mr. Gilchrist says (Tr. 116) that he told the Tenino bank he would protect the drafts when they came in, in the ordinary course of business, notwithstanding the condition of their account at that time; that the drafts were to be charged to Tenino (Tr. 123). He had no knowledge of the non-payment of the drafts to Tenino by Blumauer (Tr. 116) and supposed Tenino was looking to Blumauer as in other cases (Tr. 117). The drafts and cancelled vouchers were returned to Tenino (Tr. 123) and the charges apparently were not questioned by it.

This testimony of Gilchrist's, we think, furnishes the reasonable explanation of the apparent misunderstanding between the parties, and goes far towards reconciling their accounts of the transaction. The Centralia bank was to "stand behind" the drafts (Tr. 98) to the extent of seeing that they were paid, regardless of the condition of the Tenino bank's account in the U. S. National Bank.

The Centralia bank did carry out its agreement, it did pay the drafts, and that is as much as we believe it can possibly be found, under the testimony here, that it ever agreed to do. Thus the Blumauer Lumber

Company, a customer and debtor of the Tenino bank, was accommodated, and the Tenino bank was enabled to preserve its credit with the Portland bank through taking up the notes of the Blumauer Lumber Company which it had deposited with the Portland bank as a basis of securing credit (Tr. 115), and upon which it was liable.

Appellant tries to show that the Centralia bank derived some benefit from this transaction, but such is not the case. It may have had some indirect interest in Blumauer's credit being sustained (though this interest was not so great as appellant supposes. Supp. Tr. 514), but so had the Tenino bank, for the same reasons (Tr. 116).

If, as appellant contends, the Centralia bank was in effect lending its credit for the benefit of the Tenino bank, or of the Blumauer Company, then the case falls within the principle of the authorities already cited (Ante p. 14), and the Centralia bank incurred no liability. And the fact that the purpose may have been to aid someone largely indebted to the bank is immaterial. *Johnston vs. Charlottesville National Bank*, Fed Case No. 7425. That is indeed the usual situation when a bank attempts to lend its credit.

We submit that under the *facts*, the Centralia Bank never purported to assume any obligation with respect to these drafts, further than to pay them, which

was done. And that under the *law*, any such agreement as appellant contends for is *ultra vires* and void, that it would be the right and duty of the Centralia Bank to repudiate it, and that if appellant proves his case on the facts he at the same time proves himself out of court on the law.

Further, the facts as construed by plaintiff would place Gilchrist in the position of attempting to relieve parties with whom his bank was dealing from their liability upon negotiable paper—a thing which an officer of a bank has no authority to do.

See note, 28 L. R. A. N. S. 511 and 501; 3 R. C. L. 442.

(b)

The Hays' Five Thousand Dollar Note Transaction.

Prior to July 24th, 1913, Hays, who was then cashier of the Tenino bank, had a \$2,000 note in the Centralia bank which the bank had been carrying for a considerable time, and had been insisting upon Hays taking up (Tr. 117). In a letter to Gilchrist on the date mentioned (defendant's Exhibit D, Tr. 177), Hays makes Gilchrist the proposition of giving another note for \$5,000 secured by stock in the Tenino bank, of which amount \$3,000 was to be placed as a special deposit to the credit of the State Bank of Tenino, which the Tenino bank would not draw against. Gilchrist

testifies (Tr. 117) that the loan was finally made to the best of his recollection in November (1913), with the understanding that \$3,000 of the amount should remain as a special deposit for the State Bank of Tenino, which the Tenino bank was to maintain until the note was liquidated. The \$2,000 note was sent to Tenino and credited to the Tenino bank's account, and the statement was rendered and reconciled (Tr. 118, 119). The \$5,000 note came down to the Centralia bank in the ordinary course of business with other notes from that bank and was credited to the State Bank of Tenino on November 25, 1913 (Tr. 119, 141). It was plainly Gilchrist's understanding that both the original and renewal notes were the obligations of the Tenino bank (Tr. 120). The fact that there was no endorsement of the Tenino bank on the note can hardly be deemed material since the two banks were in the habit of handling similar unendorsed paper in the same manner (Tr. 120). Mr. Gilchrist is positive as to this being the obligation of Tenino (Supp. Tr. 511, top). It appears that the Tenino bank did not keep its agreement to maintain a special deposit of \$3,000 with the United States National Bank, but that the account fluctuated back and forth as it had always done (Tr. 120).

The Tenino bank *did not question the right of the Centralia bank to charge the \$5,000 note to its account*

when it was first returned to Tenino (Tr. 121), on July 15, 1914 (Tr. 142), but after keeping it for some time, returned it with the request that the Centralia bank keep it temporarily, as Gilchrist explains it, so that Hays could get his books straightened up when anticipating a visit from the bank examiner. The note was then immediately again returned to Tenino (Tr. 121), on July 24, 1914 (Tr. 142).

The court will note the very significant fact which is not clearly brought out in the printed transcript, but appears in the supplemental transcript, p. 597, that the *interest* on this note, amounting to \$133.13, was allowed to remain as a charge against the Tenino bank from the date of July 16, 1914, when the note was first sent back to Tenino. This interest is not now in dispute as Mr. Hill testifies (Tr. 597). The receiver of the Tenino bank has made no complaint in regard to it either in the lower court or here. If the plaintiff's contention as to the impropriety of charging this note against the Tenino bank is sound, that impropriety extends to the charge of the *interest* as well as the *principal*. Yet the Tenino bank seems to have allowed the charge as to the interest without any question. This must be held as showing that the reason that they returned the note and did not at that time credit the Centralia bank with it is not that Tenino supposed Centralia was not *entitled* to credit, but that the return of it and the withholding of credit from Centralia were due

to the reasons stated by Mr. Gilchrist. The Tenino bank seems content to ratify a part of the transaction but tries to repudiate the remainder. This cannot be done.

Mr. Gilchrist testifies positively (Tr. 497) that the State Bank of Tenino never made any objections or protest whatever against the charging to them of either of the Hays notes. *This charging back was in accordance with a custom existing between the two banks to charge back paper which turned out to be bad, or depreciated in value* (Supp. Tr. 125). And is in fact according to the usual custom among banks. Hays' testimony tends to support Gilchrist's upon the point that the Tenino bank did not dispute its liability upon the note when he states (Tr. 77) that the Tenino bank "refused payment of it (the \$5,000 note) and returned it to the United States National Bank of Centralia with a statement of explanation that Mr. Gilchrist was going to buy witness' stock in the State Bank of Tenino, and would take up that note and pay the difference." That is, the reason the note was returned was not on account of any denial of liability of the Tenino bank on it, but was because they thought they saw a way to get the note paid by the maker. Plaintiff Langley himself testifies (Tr. 110) that he has no evidence that the Tenino bank disputed the item. The fact that the note was not entered in any way on Tenino's books is

not at all conclusive as Mr. Langley himself explains (Tr. 110).

The fact that the note was on the form used by the Centralia bank is not significant and is fully explained by Mr. Gilchrist (Tr. 120).

The material facts, in reference to this note, may be summarized as follows:

The Centralia bank has a \$2,000 note of Hays', which it has received through the Tenino bank in the ordinary course of business, and which, though possibly not endorsed by Tenino, was precisely similar to numerous other notes which the banks in their previous dealings had recognized as obligations of the Tenino bank. Hays failing to pay it, it is renewed (Tr. 134) by Hays giving a \$5,000 note which is remitted to the Centralia bank through the Tenino bank, and placed to the credit of the Tenino bank in the same way as any other renewal note would have been credited, except that here the renewal note was for a larger amount than the original note, and this additional amount of \$3,000 the parties agreed should be carried as a credit, not to Hays, but to the Tenino bank. In course of time, when the renewal note was not paid, the Centralia bank returned the note as it would have returned any other overdue paper. This was in accordance with a custom between the two banks with respect to such paper (Supp. Tr. 125). The ap-

pellant's complaint with respect to the action of the lower court seems to be that the \$3,000 credit was drawn out and used by Hays for his own private purposes. But there is no evidence, and it is not even contended that the United States National Bank had any knowledge of any misappropriation which Hays may have made. In fact, as Hays himself testifies, he drew the money *out of the State Bank of Tenino* (Tr. 80). Hays may have drawn money from the Tenino bank which *he* thought was to be charged by the Centralia bank against this particular credit. Gilchrist says that the credit was to the Tenino bank and not to Hays, and the note was undoubtedly carried by the Centralia bank to the general credit of the Tenino bank, and was finally charged to the Tenino bank the same as any other overdue and unpaid item would have been.

If Hays was misapplying funds of the Tenino bank, we of course would not be affected by it so long as we had no notice. *Goshen National Bank vs. State*, 36 N. E. 316 (New York).

The evidence shows, we think, *first*, that the Centralia bank had a right to charge back this note to Tenino; and, *second*, that it exercised that right and its exercise was concurred and acquiesced in by the Tenino bank before the insolvency of either.

Upon this branch of the case, we submit that the decree of the lower court was right both as to the Blu-

mauer Lumber Company drafts and as to the Hays note, and that it should be in all respects affirmed as to the receiver of the Tenino bank.

APPELLANTS NOT ENTITLED TO PREFERENCE.

As to the suggestion that the plaintiff McKinney or the intervenors are entitled to a preferred claim against the appellees, this could be sustained only by proof of the following facts:

(a) That there was a relation of trustee and *cestui que trust* and not merely of *debtor and creditor* between the two banks.

(b) That there was a trust fund *which actually came into the possession* of the Centralia bank.

(c) That this trust fund was traced into the assets *which came into the receiver's possession* upon insolvency, and

(d) That appellants are entitled to such trust fund as against other claimants of a right to preference.

Not the slightest effort is made by the appellants to establish any of these essential and fundamental propositions. This matter of trust funds has recently been before this court in *Titlow vs. McCormick*, 236 Fed. 209, decided September 5, 1916. See also *In re*

Acheson, 170 Fed. 427, *Spokane County vs. First National Bank of Spokane*, 68 Fed. 979, both of which cases were decided by this court. *Schuyler vs. Littlefield*, 232 U. S. 710; *American Can Company vs. Williams*, 178 Fed. 420, C. C. A. 2d Cir.; *Empire State Surety Co. vs. Carroll*, 194 Fed. 593, C. C. A. 8th Cir.; *City Bank vs. Blackmore*, 75 Fed. 771.

OUR OPPONENTS' BRIEFS.

We have perhaps already sufficiently answered our opponents' arguments, but on account of the complicated nature of the case, think it advisable to refer to them again briefly in certain particulars.

As to appellant McKinney's brief. This appellant's conception of the facts differs fundamentally from our own. We do not deem it necessary to discuss the applicability of the authorities which he cites to the theory which they are claimed to support, as there is nothing, we believe, in the facts upon which that theory can be predicated. Our contention is that there was no payment of Hays' obligations with funds of the Olympia Bank & Trust Company, but merely a cancellation by the United States National Bank of a credit which was fraudulent and void from the beginning as against the creditors and stockholders of that bank.

As to the complaint made by appellant McKinney (p. 35 to 39, appellant's brief) in regard to the return

of Olympia stockholders' notes. He is, as we have previously pointed out, not in a position to urge this claim, as the intervenor appellants, who were at the request of McKinney's counsel and upon his representation that there was no conflict between intervenors and plaintiff, represented at the trial by the same counsel who appeared also for plaintiff, *asked and received in open court* before the conclusion of the trial the very notes of whose return receiver McKinney now complains. (Supp. Tr., p. 586.)

As to appellant Langley's brief. We have, we believe, sufficiently answered this appellant's arguments under our previous discussion of the appeal of the receiver of the Tenino bank.

As to the appellant intervenors, We cannot attempt to correct all of the inaccuracies of this brief without restating it *in toto*. It seems to us that nearly all of the material statements in it are wrong, as the record and particularly the supplemental transcript will show, although we do not wish to be understood as charging counsel for the intervenors with any bad faith or desire to mislead the court.

We protest against the statements outside the record, too numerous to mention here, contained in intervenors' brief, and against their unqualified and incorrect statement (Intervenors' brief, p. 5) that Hays *sold* his bank in Tenino to Gilchrist, "or to the United

States National Bank.” The suggestion that the appellee, United States National Bank, purchased the Tenino bank of Hays is wholly untrue and unsupported by any testimony whatever. It finds no support even through error in the printed record, while the statement that Hays had sold his bank is shown to be untrue by the admissions of Hays himself, as well as of Gilchrist, contained in the typewritten transcript of the testimony, but omitted from the printed record and commented upon elsewhere in this brief (Supp. Tr., pp. 64-65).

Next intervenors (pp. 6 and 7, their brief) give, we think, a mistaken impression as to the origin of the plan to start the Olympia bank, by omission of reference to the testimony, called attention to by comment and inquiry of the trial court, and omitted in condensed statement of the evidence, to the effect that Hays first took this matter up with Gilchrist at Centralia, and at that time told him that he was going to sell his Tenino bank and start a bank in Olympia. It was Hays’ plan, not Gilchrist’s. (Supp. Tr., p. 525.)

All reference to the fact that intervenors as officers of the Olympia bank, in order to lawfully start business must have themselves *made affidavit that the stock had been paid in cash*, is omitted.

The omissions in the testimony quoted by intervenors are very glaring. For instance, at the top of

page 12, intervenors' brief, will be seen the statement, "He was subscribing for it in his personal capacity." This statement is made in the condensed statement of evidence and in the brief without the slightest mention of the striking qualification which the witness embodies in his answer, and which changes the whole meaning. It is taken from page 522 of the certified statement of evidence, where the actual testimony appears as follows:

(Cross-examination of Witness Gilchrist.)

"Q. He was subscribing for the stock in his personal capacity?

A. Yes, you might say he did subscribe for it individually as his name appears, *but with the instruction of the board of directors.*

Q. He told you then that he subscribed for the balance of the stock under the instructions of the board of directors?

A. After a thorough understanding, yes."

Similarly inaccurate condensations of testimony are so numerous that to refer to all of them would extend our brief beyond all reasonable limits of endurance of the court. On the same page occurs another statement from the condensed record which is most unfortunate. Gilchrist is there quoted as saying:

"Mr. Hays told me that he subscribed for \$36,550 worth of stock personally; I had no means of knowing it except what he told me. I never had any dealings with anyone with reference to the \$48,000 worth of notes or to the \$50,000 worth of credit at the United States National Bank except with Mr. Hays."

The testimony from which this testimony is condensed appears on page 548 of the complete or supplemental transcript of the testimony, and is as follows:

“Q. Then the credit which the United States National Bank gave on account of these two Hays’ notes are a personal credit to Mr. Hays secured by the notes and the stock—evidenced rather by the notes, and secured by the stock which was left with you afterwards as collateral?

A. *It was a credit to the Olympia Bank & Trust Company through and by the knowledge of the officials of the Olympia Bank & Trust Company.*

BY MR. O’LEARY: I move to strike his answer, as not answering the question.

BY THE COURT: *The motion may be denied.*

BY MR. O’LEARY: Exception.

Q. Well, now, you never had any dealings with any one with reference to that Forty-eight Thousand Dollars of notes or the Fifty Thousand Dollars original credit which the Olympia Bank & Trust Company obtained, excepting with Mr. Hays?

A. No sir.

Q. Then as far as any one is concerned who was interested in the Olympia Bank & Trust Company you had no understanding with them at all?

A. The understanding I had was the knowledge, full knowledge of a meeting that took place at the organization of the bank.

Q. All that you knew about that meeting, Mr. Gilchrist, was what Mr. Hays told you?

A. Yes sir.

Q. And when you speak about the knowledge which the other officials of the Olympia Bank & Trust Company had of the transaction, you are

basing that statement only on what Mr. Hays told you about what their knowledge was?

A. I am basing my recollection of it on my statement of the facts as borne out by the statement in the minutes of the meeting in which Mr. Hays stated to me that it was with the knowledge of his associates that he was carrying out the arrangement along that line. *I don't think that counsel thinks for one minute that I would have thought of taking W. Dean Hays' notes for Thirty-six Thousand Dollars under any other conditions.*

Q. The conditions under which you took that note was because you thought he was going to in turn sell this stock that he subscribed for or most of it?

A. In the same manner that his associates thought to.

Q. Well, you don't know what his associates thought, except what he told you?

A. Well, he evidently told the truth largely, because it is in the minutes too."

Intervenors, referring to their own promissory notes, say: "The other notes held by the bank were good notes, and there was no need to worry about that." Without being so intended by intervenors' counsel, this statement in the connection in which it appears may be understood as implying some estoppel as to rescission on our part with regard to the \$11,500 of intervenors' notes. The fact is, as disclosed by the record, that the notes were not good (Supp. Tr., p. 335), and that knowledge of the fact that they were held by the United States National Bank or the manner in which they have been obtained is never brought home

to the board of trustees of appellee bank. There was no power of rescission until the origin of these notes in the fraudulent transaction with Hays was discovered, as well as their mere existence. Our opponents say the directors did not repudiate the original credit, but made a counter charge through sending back the notes. The fact is that the original credit appeared simply as an innocent remittance, "R. \$48,000." The manner of charging it off was quite correct. It is not the practice of banks to go back through their books and *strike out* entries relating to rescinded transactions.

The authorities cited by intervenors nearly all show on their face the reasons why, as we think, they are quite inapplicable to the facts here presented. Indeed the very quotations from these authorities included in intervenors' briefs in most cases disclose their inapplicability. For instance, on p. 25, intervenors' brief, *Cox v. Robinson*, 27 C. C. A. 120, by the terms of the language quoted limits the application of the rule stated to actions within the scope of the *ordinary course of business* of a cashier. The next case relates to *customary acts*. The next only to acts in the *legitimate business of banking*. *First State Bank Receiver v. Farmers Bank*, 155 Ky. 693, cited on page 26 of intervenors' brief, by the terms of the language quoted, limits the rule to cases in which the assignment is *for a*

valuable consideration. The next case cited is clearly inapplicable. The next relates to the rights of an *innocent holder* of a certified check, and the next to evidences of debt *in the ordinary course of business.* The foregoing are typical. So far as they apply, they certainly do not aid appellants.

As elsewhere pointed out, the \$24,000 note was not in fact sold, re-discounted, or transferred to the Union Loan & Trust Company, but the whole original transaction having been fraudulent, it appears that both this note and the other Hays' note were kept out of the pouches of the United States National Bank by Gilchrist so that the transaction would not be discovered, and he says that he "charged" the note to the Union Loan & Trust Company, but the record itself proves that he is mistaken in this. (Tr. 158.) Gilchrist's contention on this point is not that he took the other note to the United States National Bank and then re-discounted it or transferred it to the Union Loan & Trust Company, but that he never put it into the United States National Bank at all. (Supp. Tr. 505.) Intervenors' statement, p. 39, their brief, that Gilchrist was an officer of Union Loan & Trust Company and had the right to put the Hays' note in that bank, and that he did so is contrary to the uncontradicted proof that he was not an officer or director of that bank (Supp. Tr., p. 531).

It is stated on page 30, intervenors' brief, "It must be assumed as a fact that Charles Gilchrist, the father of C. S. Gilchrist, the president and a director of the bank knew of it; he was in the bank as an officer of the bank and was not produced as a witness at the trial." The record shows (Supp. Tr. pp. 455, 504) that Charles Gilchrist knew nothing of the transaction.

Our opponents seek to sustain the \$48,000 credit on the ground of innocent mistake on the part of Gilchrist. "The bank officers may have used poor judgment, but that goes with the business." The fact is, as incontestably proved by the record, that this is a case not of poor judgment but of bad faith and illegal and *ultra vires* acts.

Apparently disturbed by the possible legal effect of their own allegation that the Olympia Bank & Trust Company was organized through conspiracy and fraud, intervenors suggest (p.47) that this allegation was made by them through desire to compromise and a willingness "to make some sacrifice in the name of equity and fair dealing." We do not understand this to amount to a denial of the truth of the allegation referred to.

COSTS.

Appellants finally claim that there was error on the part of the trial court in not allowing them costs. The fact is that the total amount allowed appellants

was a few dollars less than the appellee receiver had offered to allow them.

The rule applicable here is stated in 2 Foster's Federal Practice, 5th Ed., Sec. 407, as follows:

"In equity and admiralty the award or denial of costs is always in the discretion of the court."

In view of the unfounded assertion of enormous claims against the insolvent Centralia bank which its receiver was compelled to defend against, we think it is clear that the discretion of the trial court in this particular was not abused.

Plaintiff receivers herein not authorized to maintain the present action on account of the repeal of the statute under which they were appointed.

The receivers, both of the Olympia Bank & Trust Company and the State Bank of Tenino, were appointed under Remington & Ballinger's Code, Sections 3303 and 3305.

Section 3303 authorizes the courts to appoint receivers for certain causes other than insolvency.

Section 3305 is the section authorizing receivership upon *insolvency*. It provides that if upon the examination by the examiner it appears that the bank is insolvent, it shall be his duty to take charge of it and ascertain its condition, and if satisfied that it cannot resume business or pay all its creditors,

“He shall report the fact of its insolvency to the attorney general, who shall immediately upon the receipt of such notice, *institute proper proceedings in the proper court for the purpose of having a receiver appointed* to take charge of such bank and to wind up the business thereof, for the benefit of its depositors, creditors and stockholders.”

Section 3306 refers to the compensation of receivers.

Section 3309 refers to the order of priority which the receiver shall follow in allowing claims.

All the above cited sections of Remington & Ballinger's Code were expressly repealed by Chapter 98 of the Session Laws of 1915, which became effective on June 10th, 1915. This 1915 Act changes the entire procedure for liquidating insolvent banks and provides that the administration of their affairs shall be had by and under the direction of the state bank examiner, and contains no saving clause as to banks already insolvent and in course of liquidation under the former law.

Section 1 of this Act provides:

“Whenever it shall appear to the state bank examiner that any bank or trust company is in an unsafe or unsound condition, or that it is unsafe or inexpedient for such bank or trust company to continue business if he shall deem necessary, he may take possession of such bank or trust company and administer the same as herein provided.”

Section 10 provides :

“No receiver shall be appointed by any court, nor shall any deed of assignment for the benefit of creditors be filed in any court within this state, for any bank or trust company doing business under the laws of this state except upon notice to the state bank examiner, unless in case of urgent necessity it becomes in the judgment of the court necessary so to do in order to preserve the assets of such bank or trust company. The state bank examiner may, within five days after the service of such notice upon him take possession of such bank or trust company, in which case, no further proceedings shall be had upon such application for the appointment of receiver or under such deed of assignment, *or if a receiver has been appointed or such assignee shall have entered upon the administration of his trust, such appointment shall be vacated* or such assignee shall be removed upon application of the state bank examiner to the proper court therefor, *and the state bank examiner shall proceed in all such cases to administer the assets of such bank or trust company as herein provided.*”

Other sections prescribe details for the administration of the trust by the state bank examiner or by a liquidating agent who may be chosen by the stockholders.

The suit of McKinney, receiver of the Olympia Bank & Trust Company, was filed February 20th, 1915. The suit of Langley, as receiver of the State Bank of Tenino was filed December 6, 1915. It will thus be seen that the McKinney suit was filed *before* and the Langley suit *after the 1915* law went into effect. This, however, we believe immaterial, since both of the re-

ceivers derive their authority from the provisions of the repealed statute.

It will be seen that the 1915 Act transferred the administration of insolvent banks from the *courts* to the *State Banking Department*. We deem it a serious question whether this had not the effect of terminating the jurisdiction of the Superior Court of Thurston County, which appointed the plaintiff receivers, over the subject matter, and as a necessary consequence of ending the authority and powers of the receivers, except to account for assets taken into their possession up to the time their authority ceased, and turn them over to the State Bank Examiner.

The authorities are clear that the repeal of the statute conferring jurisdiction or transferring jurisdiction over a particular class of actions or proceedings from one body or tribunal to a different one, has the effect of terminating the authority of the body or tribunal, which under the repealed act had jurisdiction, and leaves it without authority to take further proceedings.

For instance, in *Grand Trunk Railway vs. Board of Commissioners*, 33 Atlantic 988 (Maine), the County Commissioners, in February, 1893, instituted proceedings for the determination of the question of whether a flagman should be required at a certain railroad crossing, and on June 5, 1893, adjudged that such flag-

man was necessary. On April 28th, of that same year, a new statute had gone into effect, which conferred jurisdiction over such proceedings upon the *Railroad Commissioners*, instead of the *County Commissioners*, without any saying clause respecting proceedings then pending. It was held that the new statute deprived the *County Commissioners* of jurisdiction over the subject matter, and that their action of nugatory.

See also: *Remington vs. Smith*, 1 Colo. 63; *Hunt vs. Jennings*, 5 Blackf. (Ind.) 195; *French vs. State*, 53 Miss. 651; *Musgrove vs. Vicksburg & Nashville R. R.*, 50 Miss. 677; *Lamb vs. Schottler*, 54 Calif. 319; *Baltimore & Potomac Railroad Company vs. Grant*, 98 U. S. 398, 25 L. Ed. 132; *South Carolina vs. Gaillard*, 101 U. S. 433; *Ex-parte McCardle*, 74 U. S. 506.

The foregoing authorities are illustrative merely of various applications of a principle which we believe governs the case at bar, and in conclusion upon this point we submit: *First*, that the repeal of Section 3305, Remington & Ballinger's Code terminated the jurisdiction of the Superior Court of Thurston County, over the administration of these trusts; *second*, that it revoked the authority of plaintiffs McKinney and Langley, to do any further acts in respect to the administration of these trusts, including necessarily the discontinuance of these present suits.

These contentions were raised in the court below, as page 282 of the stenographic report of the testimony shows.

It is clear that upon application of the State Bank Examiner to the Court by which appellant receivers were appointed it would under the statute above quoted be bound to interdict any further activity of receivers and to leave the State Bank Examiner free to administer the assets of these banks under the statute now in force. The only question open with regard to the matter is whether an application to and action by the Court appointing the receiver is necessary to terminate the receiver's power to pursue additional assets.

In conclusion we venture to assert that this Court has seldom been called upon to exercise its equitable powers for the assistance of parties who had less of equity to commend them than attends the plaintiff McKinney and the intervening stockholders.

Disregarding all technicalities and considering the case only from the broad viewpoint of what disposition of it is demanded in order to attain the ends of *justice*, the conclusion that the defendants must be exonerated from further liability in respect to these fraudulent transactions seems to follow inevitably.

On the one hand is the appellant McKinney representing, as the record shows, not creditors seeking to

retrieve losses through having placed a misguided confidence in the United States National Bank, but the negligent or fraudulent incorporators of the Olympia bank, and with the receiver those same incorporators themselves, not deterred by their own entire lack of equity from seeking a recovery where they have invested nothing and have sustained no loss; on the other hand, the defendant receiver representing some three thousand innocent persons, against whom no wrong can be imputed and who in justice are entitled to demand that their already heavy losses may not be increased by the imposition of burdens arising through any attempted embarkation by the defendant bank in enterprises beyond the scope of its legitimate powers and in fraud of the laws under which it had its existence.

Respectfully submitted,

FREDERICK BAUSMAN,

ROBERT P. OLDHAM,

ROBERT C. GOODALE,

Solicitors for Appellees.

WALTER L. NOSSAMAN,

Of Counsel.



IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

FRANK P. McKINNEY, as Receiver of the OLYMPIA BANK &
TRUST COMPANY, a Corporation,

Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corpora-
tion, and A. R. TITLOW, as Receiver of the UNITED STATES
NATIONAL BANK OF CENTRALIA,

Appellees,

and

C. S. REINHART and C. WILL SHAFFER, Stockholders of OLYM-
PIA BANK & TRUST COMPANY, a Corporation, for Themselves
and All Other Stockholders of Said Company,

Appellants,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corpora-
tion, and A. R. TITLOW, as Receiver of the UNITED STATES
NATIONAL BANK OF CENTRALIA,

Appellees,

and

ROY A. LANGLEY, as Receiver of the STATE BANK OF TENINO,
Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corpora-
tion, and A. R. TITLOW, as Receiver of the UNITED STATES
NATIONAL BANK OF CENTRALIA,

Appellees.

**REPLY BRIEF OF APPELLANTS, McKIN-
NEY, RECEIVER, AND THE
INTERVENERS.**

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN
DIVISION.

P. M. TROY,

Solicitor for Frank P. McKinney, as Receiver of the
OLYMPIA BANK & TRUST COMPANY, a Corporation.

Business and Post Office Address: Olympia National Bank
Building, Olympia, Washington.

C. WILL SHAFFER,
Solicitor for Interveners.

The Washington Standard Print, Olympia, Wash.

FILED
MAR 14 1917

F. D. ...



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 Building, Olympia, Washington.

C. WILL SHAFFER,
 Solicitor for Interveners.



Counsel for appellee, it seems to us, is attempting to use the same tactics in this court which he used, possibly with success, in the lower court. There he presented his case on the theory that the Olympia Bank & Trust Company was organized under the general banking act of the State of Washington, which act he read to the court, and which act permits a bank to be organized with only a part of its capital stock paid in, permitting the rest of it to be sold, hypothecated or disposed of later on. In the rush to close up this case the court's mind was not disabused of that fact, as is shown on page 557 of the supplemental transcript.

By Mr. Vance, on cross-examination of Mr. Gilchrist:

"Q. It was equally well known to you as a rule of law, and to him, that this bank could not borrow money or do any business until the stock was paid for?

A. They couldn't organize or get started until the stock was fully paid for.

Q. You both knew that at the time?

By Mr. Goodale: I object to that. I don't understand that to be the law at all.

By the Court: The objection may be sustained."

After this appeal was taken the appellants, though not required to do so, served on appellee a

complete transcript of the testimony the same as the copy he has filed in this court. Later the condensed transcript was also served on him, though not required by law, and he proposed additional parts of the record to be incorporated into this condensed statement. (See appellee's praecipe for transcript of record, p. 204, Trans. of Rec.) And compelled us to print over fifty pages of tabulated matter that to us seemed to have no relevancy whatever to this case. (See pp. 224-280, Trans. of Rec.)

He had notice of the settling of this condensed statement, and counsel and court waited until late in the afternoon for his appearance before settling the statement. After the condensed statement was settled and was printed by the clerk of this court, printed copy was mailed to the appellee, and was in his possession some weeks, and after the appellants had prepared and served their brief, and the interveners had prepared their brief, he then moves this court for a dismissal on the ground that he had no notice of the settlement of the condensed statement.

He then urged upon this court that the condensed statement was untrue, and this court gave him the right to file the stenographic copy of the evidence served upon him by appellants, which he did and denominates a supplemental transcript, and to point out wherein the condensed statement was un-

9.

true. To this order of the court we think he has not complied. He did not in oral argument, nor does he in his brief attack the condensed statement. Inasmuch, however, as his brief refers the court to the complete typewritten transcript in most instances, appellants have asked permission to reply, which the court granted, and this brief is filed in accordance with such order.

FALSE STATEMENTS MADE BY APPELLEE.

Counsel attacks, especially the interveners' brief, as being false and misleading, but interveners deny such claim, and contend nothing has been stated not contained in the record or included in such matters of which the court may take judicial notice.

On the contrary, appellants think that counsel for the appellee has misquoted the record, and these mis-statements will be numbered with the page of the appellee's brief indicated and later on will be discussed in the order in which they are numbered.

MIS-STATEMENTS LISTED.

1. Nearly all of them admit their notes were not bankable paper. (p. 6.)
2. That they were not worth their face or that they do not know what their notes were worth, if anything. (p. 6.)

3. Hays came from Montana voluntarily to testify as a witness for appellant. (p. 7.)
4. That loan was made on capital stock. (p. 7.)
5. That Gilchrist received no money but only stock of the Olympia Bank & Trust Company. (p. 8.)
6. That the obligations given by Hays to Gilchrist were obligations of the Olympia Bank & Trust Company. (p. 9.)
7. That Gilchrist was to be made an officer in the Olympia Bank & Trust Company. (p. 9.)
8. That the corporate stock of the Olympia Bank & Trust Company was charged on books of the United States National Bank. (p. 9.)
9. That Hays' note of \$12,500 was charged back "in accordance with previous agreement." (pp. 9-10.)
10. That the directors of the United States National Bank did not know of the dealings of Hays until September 14th. (p 10.)
11. That there was ground for suspicion that Hays had destroyed his notes. (Bottom of p. 10.)
12. That interveners accepted the tender of the notes of the stockholders other than Hays. (p. 11.)
13. That the giving of the credit by United States National Bank was *ultra vires*. (p. 12.)

14. That the directors or any directors of the Olympia Bank & Trust Company caused an officer of the United States National Bank to violate his duty. (p. 13.)
15. That the United States National Bank took into its possession the worthless notes of the incorporators of the Olympia Bank. (p. 13.)
16. That an officer of the United States National Bank certified to a non-existent fact. (p. 14.)
17. That the stock of the Olympia Bank & Trust Company was handed to Gilchrist as collateral. (p. 17.)
18. That the original credit of the Olympia bank was fraudulent and void. (p. 17.)
19. That Gilchrist informed Daubney or his other directors that he was promised a position as an officer in the Olympia Bank & Trust Company. (p. 21.)
20. That Gilchrist made a false entry of credit in favor of the Olympia Bank. (p. 22.)
21. That the stockholders of the Olympia Bank & Trust Company authorized Hays to make all its financial arrangements. (p. 23.)
22. That there was no evidence that the certificate or affidavit made by the cashier of the United States National Bank was ever brought to the attention of the state bank examiner or other-

wise actually used.

23. That the recovery sought in this action is unnecessary to meet the claims of all depositors. (p. 26.)
24. That both banks are bound by the action of Hays and Gilchrist in issuing the drafts. (p. 27.)
25. That any part of the \$50,000 credit was never withdrawn or attempted to be withdrawn. (p. 33.)
26. That the other stockholders of the Olympia Bank & Trust Company knew anything about Hays' transaction with Gilchrist in obtaining the credit that Hays obtained. (p. 34.)
27. That the books of the Olympia Bank & Trust Company showed any connection with the United States National Bank other than a credit in that bank or that any of the directors knew of any arrangement Hays had with the United States National Bank. (p. 35.)
28. That Howell congratulated Hays upon making his deal with Gilchrist. (p. 35.)
29. That this action is for the benefit of the interveners. (p. 39.)
30. That \$30,000 of the deposits of the Olympia Bank & Trust Company were state deposits and have been duly repaid. (p. 39.)

31. That the assets of the receiver of the Olympia Bank & Trust Company will more than pay all of its depositors. (p. 40.)
32. That interveners or the receiver of the Olympia Bank & Trust Company do not come with clean hands. p. 40.)
33. That the directors of the Olympia Bank & Trust Company practiced a fraud upon the directors of the United States National Bank. (p. 42.)
34. That the interveners are attempting to "enrich themselves at the expense of receiver Titlow's impoverished creditors." (p. 46.)
35. "That all of the stockholders (of the Olympia Bank & Trust Company) were cognizant of or at least fully charged with the knowledge of the illegal and fraudulent character of the incorporation." (p. 47.)
36. That appellees fail to show transactions. (p. 50.)
37. That Gilchrist made a mistake when he says "charged to the Union Trust Company." (p. —.)
38. That the Tenino banking account in the United States National was overdrawn. (p. 52.)
39. That books of Olympia bank were unreliable. (p. 52.)
40. That witness Blumauer was prejudiced against

appellee. (p. 58.)

41. That Olympia bank never notified the United States National Bank of its remittances to Tenino. (p. 59.)
42. That appellants are not entitled to a preference. (p. 73.)
43. That appellants asked and received in open court the stockholders' notes. (p. 75.)
44. That the Hays' \$24,050 note was not transferred to the Union Loan & Trust Company. (p. 81.)
45. That Gilchrist was not an officer in the Union Loan & Trust Company. (p. 81.)

DISCUSSION OF MIS-STATEMENTS.

The specifications of mis-statements and conditions of appellee have far out-numbered what was first contemplated, but will be discussed and shown wherein they are incorrect as briefly as possible.

1. None of the witnesses testified that the notes given Mr. Hays were worthless. Two of them, out of a sense of modesty said, possibly their notes were not worth face value. In their minds, it was for other people to place the valuation of their securities as commercial paper. Counsel cites in support of his contention, Howell's testimony, but Howell, in addition to his note was giving other evidences of valuation, so that the consideration of Hays was not

worthless.

“Q. How did you pay for that stock, Mr. Howell?

A. Why, I had an agreement with Mr. Hays, by which he was to pay for the stock, and I was to give him an agreement in return for the payment of the stock.”

(Supp. Tr., 314.)

Gilchrist testified many times, that these notes were valuable notes. See Supp. Tr. 524-525, and intervener's brief, p. 18.

2. This is answered by No. 1, above.

3. The record nowhere shows that Hays came from Montana voluntarily. True there was no subpoena issued, or commission to take his deposition, but the fact is, that it required great effort to get Hays to come. Hays no longer had any interest in the bank. He had gone through bankruptcy. He could not even be touched on his statutory liability on his stock. Nor is there any indication that he was more anxious for our success in this cause, than for our defeat. True he was our witness, but it is very doubtful if he was as valuable to us as their witness Gilchrist, except when Gilchrist became advocate instead of witness.

4. The capital stock of the Olympia Bank &

Trust Company was not issued until at least ten days after the Olympia Bank & Trust Company opened its doors. The certificates had to be printed, and the order for the printing was not given until after the bank was organized, because the name of the institution was not definitely fixed until that time. Gilchrist says he made the loan to Hays. True, he has been coached to say in some places, that he made a loan to the Olympia Bank & Trust Company, but he always comes back to the proposition that his dealings were with Mr. Hays only. (See Supp. Tr. 518.)

“Q. And you testified before that the notes that Mr. Hays gave were his personal notes.

A. They were signed by W. Dean Hays, that was all.”

In truth, the credit established by the United States National Bank was not on fictitious evidences of valuation, but on good commercial paper. The United States National was given a draft for \$2,000 cash; was given \$11,400 in notes, which Gilchrist said were good, and which statement he repeated many times in his evidence; and which notes were not objected to by any of the directors of the United States National, and was given a credit in the Union Loan & Trust Company, a \$100,000 banking corporation, of \$24,050, and Hays' personal note to the United States National Bank for \$12,500.

Mr. Gilchrist as head of the Union Loan & Trust Company could loan Hays any amount he pleased, without any question by anybody parties to this action. He took that credit from the Union Loan & Trust Company, on which to base the credit extended by the United States National. He had agreed to buy Hays' stock in the Tenino bank, and in that deal for buying stock, had agreed to carry Hays for \$10,000 to \$15,000. It must be assumed, that as a business man, Gilchrist knew the valuation of the stock of the Tenino bank, and when he agreed to supply Hays with sufficient funds to carry \$10,000 to \$15,000 of stock in the Olympia Bank & Trust Company, he was making a good business deal.

It is denied here, that Gilchrist purchased the interest of Hays in the Tenino State Bank. Hays says that he purchased it and had sent the young Mr. Daubney to take his place.

(Supp. Tr., 64, lines 9 and 10.)

Again Mr. Daubney came from the Union Loan & Trust Company, which was owned by the same people who owned the United States National.

(Supp. Tr., 64, line 12.)

And again:

“A. Oh, along in June or July, whenever Mr. Gilchrist sent that man up there to take my place. I

don't know. It was June or July, 1914."

(Supp. Tr., 163, lines 14 to 16.)

These men, the record shows, had been a little careless in their business dealings with each other; but Hays says he agreed to sell to Gilchrist.

"A. Yes, he said he would buy it at the price I mentioned, providing that after an examination conditions were found all right; notes all right. He and Mr. Daubney came up there and made an examination of the records and he said he would take it, and he sent Mr. Daubney up there and I went to Olympia to organize this bank and did organize it." (See Supp. Tr., line 30, p. 65; lines 1 to 5, p. 66. See also Supp. Tr., 64, lines 9 to 21; also Supp. Tr. 163, lines 14 to 16.)

Blumauer was asked and replied as follows:

"Q. And after he (meaning Hays) ceased, you were the manager.

A. To some extent.

Q. Who, if anyone, took Mr. Hays' place in the bank when he left, at that time, whenever it was.

A. Mr. Daubney, one of the younger Daubneys; I have forgotten his initials. We called him Maime. M. A., I think it was.

Q. You know where he came from.

A. Centralia, I think. He was employed at the

10.
Union Loan & Trust Company, Centralia.”

(Supp. Tr., 113, lines 4 to 16.)

And Gilchrist says:

“We had sent Mr. Daubney up to assist in managing the Tenino bank.”

(Trans. Rec., 115, and Supp. Tr., 489, lines 23 to 25.)

Now, if Daubney was employed in one of Gilchrist's banks in Centralia, and was sent to Tenino to take charge of a bank, which Hays said he sold to Gilchrist, and Blumauer says Daubney was managing, and Gilchrist says Daubney was assisting in managing, it looks as though there was an actual sale thereof. In law the stock had not been transferred. And Gilchrist further testifies:

“Q. You expected to take Hays' notes for the stock he subscribed to, didn't you; you knew he didn't have the cash to pay for the \$10,000 or \$15,000 worth of stock, didn't you?

A. Well, if you go back to that, you will have to go back to where he represented he was selling his interest in the State Bank of Tenino to me.

Q. To you?

A. Yes.”

(Supp. Tr., 526, lines 28 to 30, and 527, lines 1 to 6.)

Now, Gilchrist got something therefor, for Hays' \$12,500 note, and that's the only note of Hays

the United States National had. The \$24,050 note was never in the United States National Bank.

“By Mr. Goodale:

Q. Did you, in fact, place the note of W. Dean Hays for \$24,000 in the United States National Bank of Centralia, or the Union Loan & Trust Company?

A. I directed that the \$24,050 note, that that be charged to the Union Loan & Trust Company; therefore the note never went into the files of the United States National Bank.

Q. Never was entered as a discount or asset of the United States National Bank?

A. No wise, it was charged to the Union Loan & Trust Company and credited to the Olympia Bank & Trust Company.”

(Supp. Tr., 505, lines 18 to 28.)

He testified to the same thing again:

“A. The entries were made simultaneously. This entry of \$24,050 never went through the United States National at all.”

(Supp. Tr., 531, lines 18 to 20.)

Any bank in the country would have accepted a draft of \$24,050 on the Union Loan & Trust Company. Mr. Gilchrist had a right to make a loan out of the funds of the Union Loan & Trust Company.

and his agreement with Mr. Hays is practically this: He would buy Hays' stock in the Tenino bank; he would finance Hays to the extent of \$10,000 to \$15,000 to purchase stock in the Olympia Bank & Trust Company—they finally split the difference and made it \$12,500; that as the head of the Union Loan & Trust Company he would loan Hays \$24,050, by which to purchase the remainder of the stock of the Olympia Bank & Trust Company, with the understanding that Hays was to dispose of this \$24,050 of stock as rapidly as possible, and as his stock was sold, his debt to the Union Loan & Trust Company would accordingly be cancelled; and Gilchrist would take this stock as collateral for this loan, which he says time and again was only for the Hays loan, and in fact he didn't think there was any other stock transferred to him except the Hays stock.

(Supp. Tr., 524, lines 18 to 30, and 1 to 11, p. 525.)

“A. Yes, he was to dispose of this stock as quickly as he could, and from the representations he had made, we had every reason to believe it would be taken very quickly; take up his indebtedness.”

(Supp. Tr., 542, lines 27 to 30.)

The notes of the other stockholders are good notes, which Gilchrist was glad to get, and he says this makes a good banking proposition; and he said

in effect to Hays:

“Your interest in the Tenino State Bank, and your note for \$12,500; your credit of \$24,050 in the Union Loan & Trust Company, which will be taken up shortly by the sale of that stock; your \$2,000 cash, and your \$11,450 in good bankable notes, make a good bankable proposition for the United States National, and with these evidences of valuation, we will give you \$50,000 in the United States National.”

The capital stock was not issued until ten days after this transaction took place.

(Supp. Tr., 522, lines 18 to 20.)

Therefore the loan was not made on the capital stock.

True, counsel on both sides, and others, have used the expression “capital stock” very loosely in the trial of this cause. They have not distinguished “capital stock” from “capital,” and this accounts for some of the confusion in the record.

5. This specification is fully answered by No. 4.

6. Nowhere from the record is counsel justified in making the statement that the obligations given by Hays to Gilchrist were obligations of the Olympia Bank & Trust Company. Discussion in specification 4 above shows that. True, counsel did put into the mouth of his witness those statements,

but when his witness was pinned down on cross-examination, he always stated that he had no dealings with anybody else but Hays. That the Olympia Bank & Trust Company was not yet authorized to do business, and that any loan he made was made to Hays personally.

“A. I can’t recall having discussed it with anyone with the exception of Mr. Hays.”

(Supp. Tr., 518, lines 12 to 13.)

“Q. Nothing was said about the Olympia bank subscribing for the rest of its own stock?

A. That was an impossibility.”

(Supp. Tr., 521, lines 26 to 28.)

“Q. And you testified before that the notes that Mr. Hays gave were his personal notes?

A. They were signed by W. Dean Hays, that is all.

Q. At the time these notes were given, the Olympia Bank & Trust Company had not been organized, had it?

A. Yes, sir.

Q. It had not yet obtained its certificate from you to the effect that it had \$50,000 on deposit in your bank?

A. No. They had organized and had their first meeting, but they hadn’t got their certificate from

the State Bank Examiner, admitting them, or authorizing them to do business.

Q. They couldn't do business until they got that certificate from the Bank Examiner?

A. No."

(Supp. Tr., 551, lines 3 to 18.)

This theory of the case of appellee that the obligations of Hays were the obligations of the bank is again based upon the wrong statute. The statute relating to banks without trust features. His witness was in the court room all the while under a guard from the United States penitentiary, and caught the spirit of counsel's contention, and endeavored to help him out, but of course he failed when pinned down on cross-examination.

7. That Gilchrist was to be made an officer of the Olympia Bank & Trust Company, is a statement put into the mouth of the witness by counsel. Nobody else testified to it. Hays couldn't promise him he would be an officer. If he and Hays had owned a majority of the stock, and intended to hold it, then of course they could have agreed between themselves to have made Gilchrist an officer, but the matter was contingent upon such ownership, because nobody else knew anything about such an agreement.

8. There is not a particle of evidence that the

corporate stock of the Olympia Bank & Trust Company was mentioned or referred to on the books of the United States National. The capital of the Olympia Bank & Trust Company was on deposit there and the amount of the capital stock appeared on those books, but the corporate stock was not issued until some ten days after the Olympia bank opened.
(Supp. Tr., 522, lines 18 to 20.)

Gilchrist said that what stock he took was collateral only to Hays' notes, (Supp. Tr. 524) and that he did not know there was any other stock than Hays' put up as collateral.

(Supp. Tr., 524, lines 20 to 24.)

9. That Hays' note for \$12,500 was charged back, as their books show, on August 31, "In accordance with previous agreements," is the testimony of Gilchrist only. True, their books show that \$12,500 was charged to us on that date, but whether it was the note, we had no way of telling. If it was the note, why should they on September 14 order drafts drawn on the Olympia funds to pay Hays' notes? The truth of the matter is, the United States National Bank was at this time in a death struggle. Mr. Dysart testifies that he was trying to raise

"Three or four hundred thousand to a half million dollars."

(Supp. Tr., 459, lines 8 and 9.)

and he says on page 467 Supp. Tr., that the different banks had agreed to take \$125,000 of the United States National's paper. That Director Vaness was bonding his properties for \$300,000.

Mr. Hill testifies that at the time the bank failed the deposits in the bank, subject to check, was \$403,139.37.

(Supp. Tr., 339, line 3.)

Total deposits were over one million.

(Supp. Tr., 338, line 21.)

Mr. Hill also testifies that shortly after the bank failed other concerns that owed the bank went into bankruptcy. The total of the claims that he filed in the bankruptcy court amounted to over \$300,000.

(Supp. Tr., 340.)

This shows the condition of the bank. It was carrying a heavy load of over \$300,000 of paper that was all of a questionable value. Hard times in the lumber business had come on; the bank had been carrying these firms, the record will show, and it could not carry them any longer. The bank was crying for help. Every place it could grab a little, it was grabbing for it. The men back of the United States National are to be praised for the heroic effort to save their institution. True, they became desperate, but they were in desperation, and this accounts,

no doubt, for some of the transactions in connection with the affairs of the Olympia Bank & Trust Company. As shown in specification 4, the bank did not make a bad deal in accepting the evidences of valuation, and extending the credit of \$50,000 thereon in favor of the Olympia bank. The only questionable part was the \$12,500 note to W. Dean Hays, which the manager of the bank, Gilchrist, says he was willing to take, and it was involved in some way in the deal to purchase Hays' interest in the Tenino bank. There can be no question but what an attempt was made to make the best showing possible to the National Bank Examiner. Gilchrist is now in the penitentiary because of his frantic endeavor to save his bank.

(Supp. Tr., 551.)

This is what the books showed on August 19th or 20th: The United States National owed the Olympia Bank & Trust Company \$50,000; that on the other side of the ledger was a \$2,000 remittance of cash; \$11,450 in good bankable notes; \$24,050 of a credit in the Union Loan & Trust Company and a \$12,500 note of W. Dean Hays, which was backed up collaterally by some deal for the Tenino bank stock. On August 31, this same side of the ledger showed that we had sent to Centralia approximately \$40,000 in cash. Now, on August 31, the

United States National charges us with \$12,500 more. That is, takes out of what it owes us, which is the same thing as if we had put in that much more money, if this was to cancel Hays' note, because it also kept the note. Now, on September 14, when Dysart ordered Gilchrist to go to Olympia and get drafts amounting to \$36,550, and he did get them, that all showed the same thing as adding that much to our account, or as if we had put in that much more cash. In the meantime it had charged us with \$9,500 more, which is claimed to be the Blumauer notes, but it kept the notes, and therefore is the same thing as if we had deposited \$9,500 more of the funds. So then on September 14th, for the purpose of presenting the matter to the Bank Examiner, this was the condition of its books. It had given us credit of \$50,000, and we had deposited about \$40,000 in cash, therefore it ~~showed~~ showed the Olympia bank approximately \$90,000. On the other side of the ledger was \$11,450 of good bankable notes; \$2,000 cash; \$24,050, credit in the Union Loan & Trust Company; \$12,500 note of W. Dean Hays, backed by some deal for his stock in the Tenino bank; \$40,000 in good hard cash in further paid deposits; \$12,500 remittance on August 31, a \$12,500 draft dated September 14, a \$24,050 draft, and a \$9,500 remittance at the time the Blumauer notes were charged to us. We

call these remittances, because they charged the items to us, and then kept the evidences of value, which would be the same as if we had returned these evidences of value to them. So, then, the Bank Examiner could see that the United States National owed us \$90,000 and had to its credit \$134,050. Or, if you work it the other way, the United States National owed us only \$28,000, approximately, but had to its credit approximately \$80,000; and the law required only about \$5,000 on this statement as a cash reserve; so here was \$75,000 of credits above the actual cash reserve required.

This explains why the drafts were ^{my} returned, and this corroborates Hays' testimony that the drafts were taken to fool the Bank Examiner. It was a common practice of the banks to shunt credits along to each other to meet the Bank Examiner's visits.

(Supp. Tr., 513, lines 9 to 16.)

10. In intervenor's brief, it is clearly shown that the directors of the United States National must have known of the relation between the Olympia Bank & Trust Company and the United States National. Undoubtedly they did not know of any unlawful dealings between Hays and Gilchrist, because these unlawful dealings was a theory that was hatched to defeat us. To the directors of the United

States National, at that time, there were no unlawful dealings. The only unlawful dealing that took place was when Dysart, in his desperation ordered Gilchrist to go to Olympia and get Hays to issue drafts to pay Hays' own obligation out of the funds of the bank in which Hays was an officer. It cannot be conceived that these men would do such a thing. The presumption is strong that they intended no such transaction. To do so, would have been committing a felony on their part. Mr. Dysart says that he understood the \$24,050 note of Hays was in the Union Loan & Trust Company.

(Supp. Tr., 458, lines 4 to 7.)

Gilchrist testifies that it never went into the United States National Bank, so why should they want a draft for that note.

Dysart says that during September he was quite active on the inside of the bank.

(Supp. Tr., 454, lines 10 to 17.)

He could see the books of the bank. He was a director and second vice-president. If their testimony is to be believed, he could see that the \$12,500 note had been charged two weeks before, as Gilchrist says, in accordance with an agreement; then why did they want the \$12,500 draft.

Dysart objected to only Hays' note.

(Supp. Tr., 466.)

If he objected to the original proposition, why didn't he attempt to cancel the whole matter. He knew the Olympia Bank & Trust Company was running. He was in the bank, had access to its books, was a director, was second vice-president. Their books showed the credit of \$50,000; their books showed that we had deposited \$40,000 subsequent to opening the Olympia bank; their books showed the \$11,450 notes of other stockholders; their books showed a \$2,000 remittance on August 19; their books showed a \$24,050 remittance from the Union Loan & Trust Company and their books showed that the \$9,500 claimed to be the Blumauer notes, and their files showed these ^{Blumauer} notes still in the possession of the United States National Bank; yet he says he did not know of these transactions.

If on September 14th, he knew, or had it brought to his mind that Hays and Gilchrist had proceeded unlawfully in these transactions, why did he not repudiate all of them. Why does he claim to repudiate only the Hays transaction, and why does he then to cancel the Hays' transactions commit what is on its face a felony by aiding and abetting in the use of the funds of the Olympia Bank & Trust Company to cancel the private obligations of an officer of the Olympia Bank & Trust Company.

This action of the directors, we claim, is a ratifi-

cation. We don't think they attempted to rescind; but if they did attempt to rescind the Hays' transactions, they approved the whole transactions by not rescinding in toto.

"A national bank which has received and retained the fruits of its contract to pay for goods sold on its credit and delivered to a depositor in pursuance of the contract cannot avoid payment on the ground that the contract was *ultra vires*.

First Natl. Bank vs. Greenville Oil & Cotton Co., 60 S. W. 828; 24 Texas Civ. App 645.

"Where a bank has received and retained the benefit of a contract made by its officers, it cannot plead that the contract was unauthorized by the directors or beyond the power of the bank or its officers to make."

Toole vs. First Natl. Bank of Port Angeles, 33 Pac. 345; 6 Wash. 181.

"A debt incurred by a national bank, for which it receives and retains the consideration, is not void because incurred in violation of Revised Statutes United States, Section 5202, providing that no national bank shall be indebted or in any way liable to an amount exceeding the amount of its capital stock paid in, except on circulation, deposits, special funds, or declared

dividends.”

*Chemical Natl. Bank of Chicago vs. City Bank
of Portage*, 40 N. E. 328; 156 Ill. 149.

Wellsburg vs. Kimberlands, 16 W. Va. 555.

“Although restitution of property obtained under a contract which is illegal because *ultra vires*, cannot be adjudged by force of the illegal contract, the courts will compel restitution of property of another obtained without authority of law; and, although the contract under which a national bank obtains money from an innocent third party may be *ultra vires* under Revised Statutes, Sections 5133-5136, the bank may be required to return the money so received to the party entitled thereto.”

Citizens' Central Natl. Bank vs. Appleton, Receiver, 216 U. S. 196.

11. The only grounds of suspicion that Hays had destroyed his notes, was in the statement of Gilchrist, himself, that he had delivered the notes to Hays on the morning of September 15th. Why he should have delivered the notes is not explainable. The \$24,050 note was never in the United States National Bank. The \$12,500 note, he says, was charged off August 31st. The inference would be that he did not deliver the notes, but that he delivered the stock, only for the purpose of hiding it from the National

Bank Examiner. The officers of the United States National had no control over the \$24,050 note.

12. The interveners did accept the tender of the notes only on the theory that the notes were to be cancelled; the credit obtained also on those notes to be cancelled, and that the Olympia Bank & Trust Company be given a preferred claim for all funds deposited in the United States National Bank. This the court refused to do. The court cancelled the notes allright, and the credit, but we would be foolish to accept that arrangement, together with only a general claim against the United States National. Our desire was, that all parties should be placed in the same position as they were had no Olympia Bank & Trust Company been organized.

“As between the immediate parties, fraud makes all things void which is done under its direct influence.”

1 Perry on Trusts, Sec. 167.

13. The giving of the credit, was not an *ultra vires* act.

A national bank may take stock in a corporation as collateral.

Shumaker vs. Natl. Mechanics' Bank, 1 N. B. C. 169, 2 Abbott 416.

Canfield vs. State Natl. Bank of Minneapolis, 1 N. B. C. 312.

Baldwin vs. State Natl. Bank, 1 N. W. 261;
2 N. B. C. 278, 26 Minn. 43.

It may even take its own stock as collateral.

First Natl. Bank vs. Lanier, 78 U. S. 369.

Fleckheimer vs. Natl. Exchange Bank, 79 Va.
80.

Even if the acts of Gilchrist were *ultra vires*,
the bank having received the benefit of that act is
estopped.

Bowen vs. Needles Natl. Bank, 94 Fed. 925.

Carr vs. Natl. Bank & Loan Co., 167 N. Y. 375.

Banks may not repudiate unauthorized contract
and reap its fruits. See cases cited in Digest of De-
cisions relating to National Banks, 1914, published
under the authority of the comptroller of the cur-
rency, pages 515, 516, 517, 518.

And see cases cited *supra*.

14. There is no evidence whatever that the di-
rectors of the Olympia Bank & Trust Company, or
that even Hays caused an officer of the United States
National Bank to violate his duty. The statement to
the contrary is child-like. Gilchrist testified time
and time again that he had no dealings with anybody
but Hays; that he and Daubney, both directors, one
the active manager, and the other the cashier, drove
to Olympia by auto, and there consulted Hays, and
dealt with Hays in regard to the transactions herein

involved. Besides, there was no violation of his duty. It was a fine thing for the United States National Bank to make this deal. Gilchrist, as an officer in the Union Loan & Trust Company, may have made a poor investment in loaning Hays \$24,050, to be repaid by Hays as he disposed of that portion of his stock, but Gilchrist surely approves of the credit established by the \$11,450 in notes of the other stockholders, and all of the other directors approved of them, and it only remained for the receiver himself to set up that these notes were no good. All the directors approved of the \$2,000 remittance, and some of them at least approved of the \$12,500 loan to Hays, backed by some sort of a deal he had with Gilchrist for the Tenino bank stock.

15. The notes of the other incorporators were not worthless notes, nor is there a particle of evidence to that effect. Such a statement is a deliberate attempt to mislead the court. None of the directors of the United States National objected to these notes, and Gilchrist testifies many times that they were good notes.

(Supp. Tr., 524-525.)

16. The certificate issued by the officers of the United States National Bank represented a fact. It is not fair to say, as counsel does, that this certificate was to a non-existing fact. The United States

National received for that certificate \$2,000 in cash, \$11,450 of good notes, \$24,050 credit in the Union Loan & Trust Company, and \$12,500 note of W. Dean Hays, backed by some deal Gilchrist had with him for the purchase of Hays' stock in the Tenino State Bank. This, we insist, comes very close to making the transaction what may be termed a bankable transaction.

17. The stock of the Olympia Bank & Trust Company was not issued until about September 1, or ten days after the Olympia Bank & Trust Company was organized. Gilchrist says he understood only Hays' stock was put up, and the inference from his testimony is further that it was only the stock represented by the \$24,050 loan from the Union Loan & Trust Company which was to be paid back as Hays should dispose of it.

18. Counsel quotes Hays' testimony supporting his contention that the original credit of the Olympia Bank & Trust Company was fraudulent and void. But even this testimony states that Hays used only his individual stock, "about \$36,500; near that."

Nor do we claim that Hays borrowed \$48,000 from the United States National. We insist that he did not. He borrowed \$24,050 from the Union Loan & Trust Company. He borrowed \$12,500 from the

United States National on some sort of a pledge or agreement about his stock in the Tenino State Bank.

19. Nor is there any evidence that Gilchrist informed his other directors that he would take a position as an officer in the Olympia Bank & Trust Company. This statement is Gilchrist's own testimony following the words put into his mouth by counsel.

20. We deny that Gilchrist made a false entry so far as the credit of the Olympia Bank & Trust Company was concerned, in regard to the \$50,000. We have already shown the basis on which this was given. The whole transaction appeared on the books of the bank so that all the directors might see the same, and of the five directors four of them had their offices in the bank. With the discussions preceding this it is not necessary to go further into details.

21. True, the minutes of the trustees of the Olympia Bank & Trust Company did authorize Reinhart and Hays to do certain preliminary work looking to the opening of the bank, but it is absolutely false that Hays was "authorized to make all its financial arrangements." (See copy of minutes, Supp. Tr., 189, lines 23 to 27.)

22. It is likewise not true that the certificate or affidavit of deposit made by the cashier of the United States National Bank showing a deposit of \$50,000 in favor of the Olympia Bank & Trust Com-

pany, was never officially used or seen by anybody except Hays.

This he knows to be an incorrect statement. This certificate was on file in the State Bank Examiner's office at the time the Olympia Bank & Trust Company closed its doors. That such may be filed is the object of the *affidavit* of deposit required by the State Bank Examiner instead of a *certificate* of deposit.

In Vol. 7 of Encyclopedia of Evidence, on p. 990, the text states:

“Where a statute authorizes executive officers to make general rules for the conduct of public business, and such rules are duly made and published, the courts will take judicial notice of them.”

Under this authority we cite a pamphlet furnished by the State Bank Examiner containing the laws relating to banking, and his rules and forms for making reports to his department, and on pp. 3 and 4 of that pamphlet he lays down the rules necessary to follow in order to get a certificate for the organization of a bank or a banking and trust company. This shows the affidavit was used. These rules are as follows:

“Before granting a charter or certificate of organization, it will be necessary that the fol-

lowing papers be filed with the banking department:

1. Articles of incorporation.
2. Certified copy of the subscription list.
3. Certified copy of the organizers' or subscribers' meeting, where the organization was effected.
4. Certified copy of by-laws adopted by the stockholders.
5. Certified copy of first directors' meeting.
6. Oaths of directors elected to serve until the first annual meeting.
7. *Certificate or affidavit from a solvent bank in regard to capital stock being on deposit.*
8. *Affidavit of president and cashier that the required capital has been fully subscribed and paid.*
9. List of officers and directors and post-office address and estimated net worth of each.
10. A general letter, giving the following information:
 - (a) Population of city or town where the bank is to be located.
 - (b) Number of banks already there, name of each, and the amount of deposits of each bank at last call for published statements.

(c) The nearest banks, in adjoining towns and the estimated number of people that would be served by the bank.

11. Letters of recommendation from business men of known repute, showing the business experience and financial and moral standing of the officers and directors of the bank."

In compliance with these rules the State Bank Examiner gave his certificate, which the courts hold cannot be collaterally attacked.

This certificate of the Bank Examiner is the charter of the bank. It is its authority to do business, and it cannot do any banking business until this charter is granted. Hays could not act as cashier of this bank until this charter was given. No act of the bank in the line of banking could be done until this charter was given. The statute says this charter shall be received in evidence to establish the incorporation of the bank. It cannot be attacked collaterally.

"Courts must take judicial notice of charters of banks issued by law."

See *Chamberlayne's Modern Law of Evidence*,
Par. 627, note 3.

When the examiner issued his certificate and attached his seal he granted the Olympia Bank & Trust Company "A franchise which cannot be

changed without its consent or dealt with so as to affect contract rights.”

1 *Michie, Banks and Banking*, p. 52. See also

1 *Michie*, p. 60.

This charter established the bank. The only way the charter could be attacked was by a direct action to annul on the ground of fraud. Only the state could question the charter. The certificate of the Bank Examiner was conclusive upon all parties and on the courts.

“Whether shareholders have paid for the stock as the law requires must be proved by the certificate of the officers appointed to execute the law.”

5 Cyc. 437, (d).

The State Bank Examiner's certificate stands in the same relation as the certificate of the Comptroller of the Currency of the United States treasury in relation to United States national banks.

“The question as to whether a bank has violated its charter, cannot be inquired into in a collateral proceeding. This must be done in a proceeding having that single object in view.”

1 *Michie, Banks and Banking*, p. 59, Par. 34.

“The certificate of the Comptroller of the Currency that the capital stock of a bank has been increased to a certain amount is conclusive

of the sufficiency of the facts and the regularity of the proceedings requisite to an increase, and cannot be questioned in any collateral proceeding.”

Columbia National Bank of Tacoma vs. Matthews, 85 Fed. 934.

“The action of the Comptroller in issuing a certificate approving an increase of the capital stock of a national bank is not subject to collateral attack.”

Brown vs. Tillinghast, 93 Fed. 326.

“The Comptroller’s certificate, authorizing an increase of the capital stock of a national bank, is conclusive of the existence of all the facts necessary to authorize such increase in favor of the public, and against the subscribers to such stock.”

Bailey vs. Tillinghast, 99 Fed. 801.

“The certificate of the Comptroller of the Currency, approving an increase of the capital stock of a national bank is conclusive of the existence of the facts authorizing such certificate, and a subscriber to the stock cannot question its validity.

Tillinghast vs. Bailey et al., 86 Fed. 46.

23. Nothing could be further from the truth than that the relief sought in this action is unneces-

sary to meet all the claims of our depositors. Our depositors now have due them some \$40,000. We got a general claim in the lower court for over \$25,000, upon which we will probably realize 50 per cent against the United States National, and probably a claim for \$10,000 against Tenino, upon which we may realize 30 per cent, making a claim of about \$35,000. As general creditors, if we get fifty cents on the dollar we will realize approximately \$18,000, out of which we must pay the costs of the receivership and the litigation and our depositors. The \$11,500 notes and the statutory liability on them will not even then be sufficient to meet claims of the depositors for one hundred cents on the dollar by a considerable margin.

We do not think the condition of either the United States National Bank estate, or the Olympia Bank & Trust Company estate have any bearing whatsoever on this controversy, but inasmuch as counsel for appellee has assumed to mention this feature we desire to submit the facts as they are.

24. Appellee says that if Hays issued drafts to defy the Bank Examiner, the Olympia Bank & Trust Company is liable equally with the United States National Bank. This contention hardly needs a refutation. Hays acted without the knowledge of his directors, and for an unlawful purpose to benefit the United States National Bank, using resources of

the Olympia Bank & Trust Company. The United States National Bank profited by this unlawful act, and Hays, if his notes were cancelled by this action, profited also, but not the rest of the directors of the Olympia Bank & Trust Company. It is a general rule of law that a bank is not liable for the criminal acts of its officers when such officers are acting for their individual interest. See cases cited in appellants' briefs.

Here, the United States National, as a bank, all of its directors and depositors received the benefit of this act, and all of its directors knew of it, while none of the directors of the Olympia Bank & Trust Company, except Hays, knew of the transaction, and not only did not benefit by it, but were injured thereby.

“Where a receiver is given charge of the assets of a national bank, he stands, as to such assets, in the place of the bank, and is chargeable with knowledge of all facts known to the bank affecting the character of the assets.”

People's State Bank vs. Francis, 79 N. W.
853; 8 N. Dak. 369.

“The rule that knowledge possessed by an agent while transacting business for his principal is imputable to the principal is based on the presumption that he will communicate such

knowledge as his duty requires, and is subject to exception where in the transaction he acts not only for his principal, but also for himself individually, and his interest or conduct is such as to render it certain that he would not make such disclosure.”

Bank of Overton vs. Thompson, 118 Fed. 798.

“Knowledge by one of the officers of a bank, who joined in the acceptance for the bank of a negotiable note before due, of a fact which would put a prudent person upon inquiry as to the power of the maker to execute the paper, is sufficient to charge the bank with notice of a disability, if such existed.”

Hager vs. Natl. German-American Bank,
31 S. E. 141.

“An agent cannot lawfully act for his principal and for himself in matters in which they have adverse interests, and every person dealing with an agent who is acting for himself as well as for his principal in such matters is put upon inquiry as to authority and good faith of the agent.”

Moore vs. Citizens' Natl. Bank of Piqua, Ohio,
15 Fed. 141. (Affirmed, 111 U. S. 156.)

“The cashier of a bank, as such, has no authority to issue cashier's drafts to his own

order in payment of his individual debts, and a creditor accepting a draft so drawn takes the risk of such lack of authority.”

Gale vs. Chase Natl. Bank, 104 Fed. 214.

“A bank is charged with the knowledge acquired by its cashier, president or other officers pertaining to transactions within the bank’s business.”

5 Cyc. 460 (c).

“When an officer is individually interested in a note or other matter, the better opinion is that his knowledge is *not* imputed to his bank, since his interests are best served by concealing it.”

5 Cyc. 461 (c).

25. That no part of the \$50,000 was ever withdrawn is due to the fact, if it is a fact, that the Olympia bank had deposited more cash subsequent to the giving of this certificate than it had withdrawn. The affidavit of the cashier said it was

“Subject to order of the said Olympia Bank & Trust Company.” (See page 170, Transcript of Record.)

Gilchrist testifies that it was subject to check.

Hays says it was subject to check.

“Q. Do you recall whether, or could you tell from an examination of your books, if the \$50,000 deposit evidenced by that exhibit 3, was drawn upon

by your bank or checked against?

A. A great deal of it was checked against, and, of course, some added to it. After this deposit was made, we naturally carried on a banking business, drawing drafts against them and sent remittances."

(Supp. Tr., 81, lines 5 and 6.)

26. It has already been clearly demonstrated that none of the other directors of the Olympia Bank & Trust Company knew anything of the Hays transactions with Gilchrist, nor did the books of the bank show any such transactions. Our books were clear. There was the certificate of deposit issued by the officers of the United States National; the certificate of the State Bank Examiner, that we had the \$50,000, and our books correspond with the statement, except that our books showed \$5,000 more, which we all admit was a mistake, and was charged by Hays near the time our bank failed.

27. This has been fully considered in the preceding specifications. Our books showed nothing more than they would have shown had everything been regular, except the \$5,000 Hays had added to the capital stock, and our books and their books tallied, except where they had charged us with items we knew nothing of.

28. Hays, only, testified that Howell congratulated him, and there is every reason to believe that

this congratulation only meant that Hays had made arrangements with the United States National to use it as a depository until we had vaults to handle our funds. Howell denies that he knew anything about Gilchrist in regard to the \$50,000, and Hays' testimony saying Howell congratulated him was given in another trial; State vs. Hays.

(Supp. Tr., 602, lines 1 to 6.)

29. It has already been shown that interveners will be liable on their statutory obligation, even if a trust is directed of the funds transmitted to the United States National Bank.

30. The trust deposits made in the Olympia Bank & Trust Company have been repaid to the municipalities which deposited them, but the Olympia Bank & Trust Company has not been relieved. It is of the most puerile fancy to contend that, because the surety companies have paid these funds to the State of Washington and City of Olympia, that the bank is relieved thereby.

31. This is also a puerile statement that has been answered above.

32. He contends that the interveners do not come with clean hands, and infers that the interveners conspired with Hays to perpetrate a fraud on the United States National Bank. This theory has been exploded in the argument heretofore made. In the

first place, all those who gave notes to Hays thought that they, each, were the only ones dealing so with Hays.

(See Supp. Tr., 197, lines 7 and 8.)

That Hays was a prominent man in the community.

(Supp. Tr., 334, lines 22 to 24.)

He was well to do.

(Supp. Tr., 334, lines 18 to 20.)

Had plenty of money.

(Supp. Tr., 332, lines 2 to 4.)

They had confidence in him.

(Supp. Tr., 329, lines 7 to 9.)

This is from Howell's testimony, and testimony of others is the same. The incorporators were familiar with the laws of the State of Washington; they knew the stock must be paid for in cash, as did Gilchrist.

(Supp. Tr., 520, lines 20 to 22.)

And Gilchrist also says that it was impossible for the bank to subscribe for stock.

(Supp. Tr., 521, line 28.)

And that the bank could not open and do business until the stock was sold, and the Bank Examiner's certificate issued.

(Supp. Tr., 551, lines 16 and 17.)

The other stockholders knowing this, their act

was merely the act of borrowing money from Hays or somebody to purchase this stock. Since the United States National had said that the capital was on deposit, and the State Bank Examiner had made his investigation and was satisfied that the stock was paid for in cash, and that the capital stock was on deposit in a solvent bank, there was nothing to arouse suspicion; in fact everything was to inspire confidence.

33. This specification has been discussed above. If a fraud was perpetrated, it was by the United States National on the stockholders and creditors of the Olympia Bank & Trust Company.

34. Nothing could be further from the truth than the inference of attempting to

“Enrich themselves at the expense of the receiver Titlow’s impoverished creditors.”

They have already shown that the United States National was benefited by the organization of the Olympia Bank & Trust Company; that if a trust is declared and the two institutions put back just where they were in the beginning, the creditors of the United States National will not be hurt in the least. If the Olympia Bank & Trust Company had not been organized no deposits from the Olympia Bank & Trust Company would have reached the United States National. Why not, then, have the United

States National Bank give us back dollar for dollar for what we put in there? The depositors and creditors of that bank would be just where they would have been had we not been organized, and we would be able to pay our depositors dollar for dollar.

Western German Bank vs. Norvell, 134 Fed. 724.

35. It has been thoroughly established that the stockholders of the Olympia Bank & Trust Company had no knowledge of any fraud in the incorporation. Gilchrist has the words put into his mouth by counsel, on his re-direct examination, that the directors knew all the time and participated in the fraud; but he finally admits that he talked with no one but Hays.

(Supp. Tr., 518, lines 12 and 13.)

All of them denied they knew of Hays' transactions. Everything on its face appeared regular, and they had no means of ascertaining its irregularity. Had they gone to the United States National Bank and made inquiry they could not have found anything fraudulent in the transaction. The books of the United States National Bank showed that we had a credit of \$50,000. The officers of the United States National would probably not permitted us to have inquired any further. They would not have told us of any deal with Hays. They would have assured us, as they did by the highest authority that it is possible

to assure, a statement under oath, that our bank had so much money on deposit in the United States National. Such should have satisfied anybody. It satisfied the State Bank Examiner, who has a right to make further inquiries.

36. Counsel says:

“No record of fraud on appellee’s books.”

Nor is there on appellant’s books. There is, however, on the records of the United States National entries, showing that on August 31st, we were charged with \$12,500; nothing sent to us for it. Their books also show, that a little later we were charged with \$9,500, and nothing sent to us to show what it was for. In fact, it is claimed they were for the Blumauer notes, which are still in the possession of the United States National Bank. On September 14th, their books would have shown that we were charged with \$36,550, and nothing transmitted to us. These charges were made on drafts drawn, but these drafts were not negotiated. The \$24,050 draft has never yet appeared. The \$12,500 reached the State Bank Examiner, after the banks failed, without any evidence of it ever having been endorsed, negotiated or used in any manner, many days after it was issued. It lay in the United States National Bank from the morning of the 15th day of September until it closed its doors, and the comptroller had taken charge. Can

appellee say that their books did not show some irregular transactions? We are sure he cannot point out where our books showed any irregular transactions, except one that we admit, all of us, was a mistake.

37. Why does counsel say that Gilchrist made a mistake when he says that the \$24,050 note was charged to the Union Loan & Trust Company? We have shown that Gilchrist testified positively that it never reached the United States National Bank.

(Supp. Tr., 505, lines 21 to 24.)

He again testified to this.

(Supp. Tr., 531, lines 23 to 25.)

Dysart says that he understood it was in the Union Loan & Trust Company.

(Supp Tr., 457-458.)

It was never found in this controversy. No doubt the receiver of the Union Loan & Trust Company is presenting the claim against Hays on this \$24,050 note, but it was never in the United States National Bank.

38. The books of the Tenino bank show that the United States National owed the Tenino bank. Mr. Daubney was the representative of Mr. Gilchrist. He was running the Tenino State Bank; he kept the books. These books showed no account with the Olympia Bank & Trust Company. Now, if Mr. Gilchrist's representative put on the books of Tenino,

entries to the effect that Centralia owed Tenino, it must be inferred that such was correct. If Mr. Daubney was helping to manage the Tenino bank and the Tenino bank called upon the United States National for funds, and Mr. Daubney himself did the calling (Supp. Tr., 490, lines 19 and 20), and then the United States National called upon the Olympia bank to remit to Tenino, and the Olympia bank charges the United States National, and the Tenino bank, run by a representative of the United States National, credits the United States National, it would seem to be plausible that the books *were correct* Daubney being the agent, his principal is bound by his acts.

39. The Olympia books show a charge to the United States National, and it has just been stated that the Tenino books, run by a representative of the United States National, was the same transaction as a credit to the United States National. We fail to see where the Olympia books are unreliable.

40. There was not a particle of evidence to show that Blumauer was against the Appellee. Blumauer and the officers of the United States National Bank had worked together for years. Not a breath of suspicion was imputed to Blumauer, in fact, we think that through his close relationship with the parties connected with the United States National, he was

very reserved in his testimony.

41. Banks, as stated before, have a loose way of doing business. When Gilchrist called for funds, and Hays said he would send them, and the Tenino bank acknowledged the credit as having come from the Centralia bank by notifying Centralia, we think that was notice sufficient.

42. We think we have clearly shown in our opening briefs that we are entitled to a preference. Innumerable authority might be cited to show that we are entitled to preference. He argues that we cannot trace the funds, therefore we are not entitled to preference on that account.

If our deposits were taken through fraud, and the Centralia bank had its assets increased to the extent of our deposits, then it is not necessary that we identify the coin.

See 1, *Morse Banks and Banking*, p. 618,
Par. 80.

Western German Bank vs. Norvell, 134 Fed.
724.

43. Appellants-Intervenors did ask for the stockholders' notes, but on condition that their prayer be granted—that we be given a preference. It would be folly for us to ask for \$11,450 of credit, except on the theory that we wish to put it in *statu quo*. Appellant McKinley, receiver, never asked for re-

turn of the notes, but refused them.

44. Counsel discredits his own witnesses when he says that "the \$24,000 note was not in fact re-discounted or transferred to the Union Loan & Trust Company." True it was not. It went direct to the Union Loan & Trust Company. Gilchrist was head of the Union Loan & Trust Company.

"A. I directed that the \$24,050 note, that that be charged to the Union Loan & Trust Company, therefore that note never went into the files of the United States National."

(Supp. Tr., 505, lines 21 to 28.)

45. He knows that the Union Loan & Trust Company was the allied state organization of the United States National. The Union Loan & Trust Company was owned by the same people as the United States National.

(Supp. Tr., 64, lines 12 to 23.)

This testimony was not disputed, and the whole record shows that these officers were the same people.

(Supp. Tr., 113, lines 10 to 16.)

APPELLEE'S AUTHORITIES.

The cases cited by appellee we think do not fit this case. His cases, for instance, on the question of *ultra vires* acts of national bank officials are to the effect that such officers may not invest the funds of their banks in the stocks of other corporations for

They may not have been the record officers but they ran the institution.

speculative purposes, or to the effect of prohibiting the guarantee of persons or accounts. None of them goes to the point of making loans on personal notes or collateral security.

CONCLUSION.

We think the record clearly shows: That Gilchrist and Hays had been dealing for some time over the stock of the Tenino State Bank and that the five thousand note of Hays found in the Tenino bank was involved in that deal.

That Gilchrist was anxious to get the Olympia Bank & Trust Company organized so its deposits could help the United States National, and that this was generally known by the other officers of his bank, who were all working desperately to keep their bank going.

That Gilchrist agreed to back Hays to the extent of ten to fifteen thousand dollars in the new bank in exchange for Hays' Tenino stock.

That Gilchrist expected Hays to place about thirty-five to forty thousand dollars' worth of stock with prominent people in Olympia, telling Hays that if any of these people did not have the ready cash, that the United States National would be glad to advance the cash on their notes, but for Hays to make it appear that he, Hays, was making the loan.

That Gilchrist was in a hurry to get the Olympia

bank started, so instead of waiting for Hays to place this thirty-five or forty thousand dollars of stock, he believing Hays would soon do so, urged Hays to subscribe for about twenty-five thousand more than he had agreed with Hays for Hays to finally carry; that for the purpose of handling this twenty-five thousand dollars' worth of stock and of soon getting it out to prospective owners, Gilchrist would make him a loan from the Union Loan & Trust Company for this amount, and as Hays would sell a block of the stock he would remit either the cash, or other evidences of value the prospective stockholder should give, to Gilchrist, and this amount of stock would be forwarded to Hays for delivery and Hays' debt to the Union Loan & Trust Company reduced to that extent.

That is why Hays charged the United States National with fifty-five thousand of our capital instead of fifty thousand, knowing that as he disposed of this stock he would collect 1.10 for it.

That the organization of the Olympia Bank & Trust Company was of much benefit to the United States National.

That the United States National was in a failing condition.

That the officers were all "sweating blood" to keep it going.

That to do so they were juggling accounts and resorting to apparent and actual crimes to save their bank.

That the fifty thousand dollars certified to by their cashier was a checking, bankable account; that when so certified by their cashier and acted upon and taken for its face by the State Bank Examiner, it was binding on all the world.

That the charter issued by the State Bank Examiner cannot be questioned except by the state in a direct proceeding to annul.

That the only fraud practiced was that involving the issuance of two drafts by Hays amounting to \$36,550, ostensibly to pay Hays' personal notes.

That these drafts were never negotiated; that if they had been they were void as against direct statutory provisions.

That if there was fraud in organizing the Olympia Bank & Trust Company the United States National benefited by that fraud and should not be allowed to profit by its own fraud.

That if fraud existed in the organization a trust resulted in favor of all those who were innocent of such fraud.

Respectfully submitted,
P. M. TROY,
Solicitor for Receiver McKinney.
C. WILL SHAFFER,
Solicitor for Interveners.

IN THE
**United States Circuit
Court of Appeals**
FOR THE NINTH CIRCUIT

FRANK P. McKINNEY, as Receiver of the OLYMPIA BANK &
TRUST COMPANY, a Corporation, Appellant,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Cor-
poration, and A. R. TITLOW, as Receiver of the UNITED
STATES NATIONAL BANK OF CENTRALIA,

Appellees,

and

C. S. REINHART and C. WILL SHAFFER, Stockholders of OLYM-
PIA BANK & TRUST COMPANY, a Corporation, for Them-
selves and All Other Stockholders of said Company,

Appellants,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Cor-
poration, and A. R. TITLOW, as Receiver of the UNITED
STATES NATIONAL BANK OF CENTRALIA,

Appellees,

and

ROY A. LANGLEY, as Receiver of the STATE BANK OF TENINO,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Cor-
poration, and A. R. TITLOW, as Receiver of the UNITED
STATES NATIONAL BANK OF CENTRALIA,

Appellees,

APPELLEES' SUPPLEMENTAL BRIEF IN REPLY TO REPLY
BRIEF OF APPELLANTS.

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IN THE
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and

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and

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UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and A. R. TITLOW, as Receiver of the UNITED STATES NATIONAL BANK OF CENTRALIA, Appellees.

APPELLEES' SUPPLEMENTAL BRIEF IN REPLY TO REPLY
BRIEF OF APPELLANTS.

APPELLEES' SUPPLEMENTAL BRIEF IN
REPLY TO REPLY BRIEF OF
APPELLANTS.

Appellants and intervenors, many of whose statements in the opening brief we were reluctantly com-

pelled to take sharp issue with and call to the court's attention as unfair, now, in their reply brief, charge us with falsely stating and misquoting the record, citing forty-five numbered instances of such alleged wrongdoing on our part.

We respectfully request the court's particular attention to these. Even a brief examination of the appellants' reply brief and of appellees' brief in connection with the record will disclose that the charges made are wholly unjustified and in most instances are not even attempted to be justified. Take, for instance, the following:

“3. Hayes came from Montana voluntarily to testify as a witness for appellant.”

We made the above statement in our brief. If it is a false statement, surely we are subject to the severest censure or to the discipline of the court, and our opponents' language is justified. Is it shown, then, that this statement is false? No such attempt is made by our opponents. On the contrary (p. 11) counsel admit that no subpoena was issued for Mr. Hays, while the record shows that he did come from Montana voluntarily to testify for appellant. (Supp. Tr. 235.) Our opponents are contented with making the statement, entirely incorrect, that Hays no longer had any interest in the bank, though there is not a word in the record to that effect, while the whole record dis-

closes that he has at all times been the largest stockholder and would have been the principal beneficiary in case appellants' claims had been sustained.

Passing over alleged false statements based on admittedly conflicting testimony which, plainly justified by the testimony on which the trial court based its decision, should not we think be made a basis for a charge against counsel of making false statements to the court, we ask your honors to observe the following:

"7. That Gilchrist was to be made an officer in the Olympia Bank & Trust Company."

The statement in our brief is

"It seems that Gilchrist was to be made an officer in the Olympia Bank & Trust Company,"

referring to page 560 of the typewritten transcript. Do our learned opponents claim that this statement is untrue or that it is not based on the testimony? Not at all. They merely say that nobody except Hays testified to that effect, and that Hays, though organizer and majority stockholder in the Olympia bank, "couldn't promise who should be its officers," yet the intervenor Reinhart himself, the president of the Olympia bank, admits (Supp. Tr. 245) that he and everybody else "regarded Mr. Hays practically as the Olympia Bank & Trust Company, leaving it to him to handle and manage it and make its financial arrangements."

We think that members of the bar of this court

do themselves and the court injustice when they make and call upon us to meet so groundless a charge of misstatement.

The next item is

"8. That the corporate stock of the Olympia Bank & Trust Company was charged on books of the United States National Bank,"

referring to page 9 of our brief. If your honors will turn to the page indicated of appellees' brief, you will observe that our statement is that the "corporate stock of the newly organized Olympia Bank & Trust Company was charged on *its* books," that is to say, on the books of the Olympia Bank & Trust Company to United States National Bank. This indisputable fact forms the very basis of our argument that while the directors of our bank had no notice of the relations between the two banks owing to the fact that the transaction appeared on our books merely as an ordinary remittance, the directors of the Olympia bank had notice *from their own books* of the real nature of the transaction. This is sufficient to bind them.

First National Bank vs. Tisdale, 84 N. Y. 655.
Mameroze vs. National Lead Co., 69 N. E. 504,
 508 (Ill.).

The alleged erroneous statements, Nos. 9 and 10, are substantially undisputed. The first is clearly and indisputably shown by the books, as well as by the testimony of the only witness who was called upon the

point, and this is admitted by our opponents. That the \$12,500 shown on the books might conceivably have been some other items as to which no testimony was offered is not a reasonable suggestion, unless learned counsel for appellants think that this court should reverse the court below for not assuming in favor of plaintiff that the state of facts is the opposite of that shown by the record in regard to the matter.

The tenth statement, that the directors of the United States National Bank did not know the dealings of Hays until September 14th, is absolutely undisputed on the record. The undisputed testimony shows that the conspirators, Gilchrist and Daubney, successfully concealed this corrupt and disgraceful transaction which our opponents now in desperation seek to defend, until September 14th, when their fellow-directors first discovered it. (See appellees' brief.) In this connection the entire change of front of appellants' counsel would be an extraordinary thing to note. On page 25 of our opponents' reply brief will be found the statement, "Undoubtedly they (the directors of the United States National Bank) did not know of any unlawful dealings between Hays and Gilchrist, because these unlawful dealings was a theory that was hatched to defeat us." Let the court note that the very appellants who now seriously ask this court to believe that there was no illegality, wrong or fraud in the rela-

in the form of drafts by the Olympia bank, in their own sworn complaint, shown on page 24 of the printed record, say "*That the said credit thus given the said W. Dean Hays (the \$50,000 sham credit) was a book credit only and by the terms of said agreement between the said W. Dean Hays and the said Charles S. Gilchrist, the funds represented by said credit were not subject to withdrawal by the said W. Dean Hays or the said Olympia Bank & Trust Company; that the said secret agreement constituted a fraud on the rights of said Olympia Bank & Trust Company and the creditors, stockholders and officers thereof on account of the conditions herein alleged and on account of the insolvent condition of said United States National Bank of Centralia; that in furtherance and fulfillment of said fraudulent and secret agreement,*" etc.

Curious indeed is the situation in which counsel would place us, for, in the lower court, intervenors go to trial upon a complaint alleging that the \$50,000 credit was a sham or *paper credit only*. The appellant receiver states in the trial court that there is no issue between plaintiff and intervenors, and the case is presented and argued by the same counsel. Then, in this court, both plaintiffs and intervenors *say that the theory that the credit was a sham credit and the*

ents is "that there was ground for suspicion that Hays had destroyed his notes." This is a statement of opinion, and is, we think, well founded, though a matter not substantially material to the issue.

The twelfth alleged false statement is "that intervenors accepted the tender of the notes of the stockholders other than Hays," referring to page 11 of our brief. This is a simple, plain, indisputable fact occurring in the course of the trial and shown by the stenographic transcript, though wholly omitted from the condensed record. There can be no question about the fact. Our opponents in their reply brief do not dispute it. To charge that this is a misstatement can only aid appellants in case the court should overlook the fact in the record and accept at its face counsel's word in their reply brief alleging this as a misstatement.

The next two statements referred to relate to propositions of law and conclusions as to the effect of the entire testimony. We are content to submit the correctness of our intentions on these points to the consideration of this court on the argument contained in the original brief.

testimony of Hays and the record of the Olympia bank prove this fact. Gilchrist was under the impression that perhaps only three-fourths of the stock was put up. Our contention is that the stock was not put up as collateral, but was the basis of a sham credit which, if it had been a real credit, would have been a subscription to or payment of capital stock of the Olympia bank.

No. 19 puts in our mouths a statement which we have never made, and illustrates merely a misreading of our brief by our opponents. As a part of the corrupt agreement with Gilchrist he was promised a position as an officer of the Olympia bank. No one claims that he told his fellow-directors of this fact. He *concealed* it from them.

"21." It is alleged that we falsely state "that the stockholders of the Olympia Bank & Trust Company authorized Hays to make all its financial arrangements." On this point the president of the Olympia bank, intervenor Reinhart, says in cross-examination by us (Supp. Tr. 245):

"Q. You and everybody else regarded Mr. Hays practically as the Olympia Bank & Trust Company, isn't that so, leaving it to him to handle it and to make its financial arrangements?"

A. Yes."

United States National Bank was ever brought to the attention of the State Bank Examiner or otherwise actually used."

This statement is like the other statements of fact in our brief, absolutely correct. On pages 34 and 35 of the reply brief our opponents twist this into a statement that the certificate was never officially used or seen by anybody except Hays, and then say:

"This he knows to be an incorrect statement."

There is no evidence that the certificate or affidavit was ever brought to the attention of the State Bank Examiner or otherwise actually used, but we unqualifiedly contradict counsel's statement that we know that the certificate was brought to the attention of the Bank Examiner or was used. We have no knowledge or information whatsoever with regard to the matter. Counsel for defendants naturally supposed that the State Bank Examiner would be called by plaintiff and that defendants would have opportunity to cross-examine him as to representations made to them by the intervenors with regard to the financing of the Olympia bank. Apparently appellants were afraid to call the Bank Examiner. The statement that the certificate referred to was on file in the State Bank Examiner's office finds no support in the record, and its

quirements of the pamphlet purporting to contain an enumeration of the evidence necessary to satisfy the State Bank Examiner on these points, as quoted in appellants' reply brief, could, of course, be waived by the Bank Examiner, and in the absence of proof on the subject we think it plain that no inference can be drawn that this particular certificate was used.

"23. That the recovery sought in this action is unnecessary to meet the claims of all depositors."

This statement is indisputably true, as shown in our original brief. Even the statement, arguments, and statements outside the record, contained in the present reply brief, the correctness of which we utterly deny, show that the relief sought is far and away in excess of any needs of the Olympia bank for the payment of the creditors, and that such relief would principally benefit Hays and the other fraudulent or grossly negligent incorporators of the Olympia institution.

No. 24 relates to the cancellation of a part of the sham credit. It is covered by our original brief, which we think fully discloses our position in defense of the ruling of the trial court that the drafts, not having been paid in cash but only used as a basis of a nominal

opponents, and is shown to be correct by the admitted statement of accounts between the two banks.

Statement No. 26 that the other stockholders of the Olympia Bank & Trust Company knew of Hays' transaction with Gilchrist as referred to on page 34 of our brief purports to be only a statement of hypothesis, not a statement of fact. In our principal brief, however, we think we have made it clear that the stockholders of the Olympia bank were put on notice of the wrongful character of the transaction.

The facts showing the correctness of statements 27, 28, 29, 30 and 31 have been set forth in detail in the brief of appellees already filed, as have the facts on which we base the conclusion stated in what appellants call "Misstatement No. 32" that neither the intervenors nor the Olympia Bank & Trust Company come into this court with clean hands.

With regard to the payment of all claims for state funds on deposit in the Olympia bank ("Misstatements" Nos. 29 to 31), we have no knowledge as to the matters alleged by counsel outside the record. The testimony is that these claims have all been paid. If counsel for appellants desired to show the contrary, he should have offered evidence to that effect before

case.

Statement No. 33 is not made by us as the court will observe by turning to the page referred to. We suppose counsel intends to refer to our statement that the stockholders and trustees and officers of the Olympia bank by gross negligence and breach of duty made it possible for the fraud and knavery evidenced in this case to be perpetrated, a conclusion which we submit the whole record abundantly sustains.

The correctness of the remaining statements will be found fully established by the citations contained in our former brief, and we will forbear wearying the court with further discussion of them. Though several of our statements are very much misquoted by our opponents there is not one of the statements actually made in our brief which we desire to change in any manner. As to "misstatement" No. 37, we refer the court particularly to pages 51 and 81 of appellees' brief where this \$24,050 note is discussed; also the discussion under No. 44, *post*.

The last five statements attributed to us by opponents and alleged to be untrue are typical of all the rest.

No. 41, to the effect "that the Olympia bank never

our opponents tacitly admit as much, remarking that banks "have a loose way of doing business," and assume without citation of the record that the *Tenino bank* acknowledged the credit as having come from Centralia by notifying Centralia. We know of nothing in the record justifying counsel's statement to this effect, but do call attention to the fact that the remittance of \$4,000 involved here was credited to Olympia, not to Centralia, on the books of the Tenino bank itself. (Tr. 64.) The fact is, of course, utterly inconsistent with Tenino's having credited this item to Centralia or so notified us.

No. 42 is a pure proposition of law, and one based on legal principles which, since the preparation of our former brief, have been again announced by this court as governing in a similar situation in the case of *Titlow, Receiver, vs. City of Centralia*, decided February 13, 1917.

No. 43 is an inaccurate statement or half truth which does not reflect our language. As shown on the page of our brief referred to under this item, the fact is that appellant intervenors asked for and received in open court the notes referred to, while represented by the same counsel as plaintiff and stating

Item No. 44 is based squarely on the undisputed statement of account between the two banks and the books of the United States National Bank itself, which clearly show (Plffs.' Ex. 5, Tr. 158) that this note was never transferred, and on the testimony of Gilchrist that the note in question was by him returned to Hays at the demand of Director Dysart. Taking counsel's statement in this regard as provocation, we think that we may perhaps be justified in going outside the record so far as to say that opposing counsel well know that this note is not and never has been received by the Union Loan & Trust Company. If it had been, however, it would have been without its ever having gone through the United States National Bank, thus leaving not even a sham or a shadow of consideration for the false credit originally purported to be extended to the Olympia institution by Gilchrist.

Statement No. 45 "that Gilchrist was not an officer in the Union Loan & Trust Company" is squarely shown by the record as cited in our original brief.

This completes a list of groundless accusations of misrepresentation which we hope and believe has never been exceeded in any case presented before this court.

by the express permission of this court, we have in our briefs referred to upon points in which we conceive the printed record to be incomplete or misleading, is referred to by us as the supplemental transcript. At the time of the preparation of appellants' brief we prepared a detailed commentary on the errors, omissions, and misstatements of the printed record, with appropriate citations to the supplemental transcript, but in view of the somewhat lengthy brief which we found it necessary to offer in order to present the respondents' case, and the fact that the errors and omissions of the printed record were necessarily developed in a discussion of the points at issue, we deemed it unnecessary to ask the attention of the court to further comment on these points.

In appellees' brief, at pages 56, 76, 77, 78 and 79, we called attention to certain of the omissions and misstatements in the printed record, and the list might be extended almost *ad infinitum*. But we believe that the testimony called attention to in our former brief as omitted or erroneously stated in the printed transcript, sufficiently shows the necessity for reference to the complete transcript of testimony, in order to avoid the court's being misled as to the evidence. If, however, the court for this or other purposes desires

misstatements in the condensed record which we prepared, but omitted from our former brief, in the belief that the court, in giving us leave to call attention to such portions of the transcript of the testimony as were omitted in the printed record, desired that we take up the time of the court with as little as possible of criticism of the condensation.

Corrections of Appellees' Brief

While we find the objections of our opponents to the statements in our former brief unfounded, in re-reading it we observe the following corrections and additions:

1. On page 21 the third paragraph is by mistake printed in solid formation as if it were a part of the previous quotation. It should be set up in the same manner as the next succeeding paragraph, being our statement and not a quotation from the testimony.

2. At the foot of page 58, the following should be added:

“\$4,000 was credited to Olympia on the very books of the Tenino bank itself.” (Tr. 64.)

We desire also to call the court's attention to an additional authority upon the point that the interven-

the court held, quoting from an earlier case:

“The receiver of an insolvent corporation represents not only the corporation but also the stockholders and creditors, and it is his duty to assert and protect the rights of each of these several classes of persons.”

An appeal by stockholders who had intervened in a receivership proceeding was dismissed.

Respectfully submitted,

FREDERICK BAUSMAN,

R. P. OLDHAM,

R. C. GOODALE,

Solicitors for Appellees.

WALTER L. NOSSAMAN,

Of Counsel.

Court of Appeals

FOR THE NINTH CIRCUIT

FRANK P. McKINNEY, as Receiver of the Olympia Bank
& Trust Company, a Corporation,

Appellant,

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Appellees,

and

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Appellees.

PETITION OF APPELLEES FOR MODIFICA-
TION OF DECREE OR FOR REHEARING.

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JUN 19 1917

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Clerk.

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PETITION OF APPELLEES FOR MODIFICA-
TION OF DECREE OR FOR REHEARING.

Your Honors' decision in this cause cannot, we
believe, in its main features, be successfully assailed;

been led astray.

The points to which we shall direct attention were not previously dealt with in detail, and, in fact, since we could not anticipate the particular grounds upon which your Honors' opinion was to be rested, and the theory upon which you would dispose of the case, could not have been anticipated by counsel in preparing the briefs formerly filed and in the argument of the cause. This, we trust, will seem an adequate justification for our calling particular attention to them now, in the same degree that it seems to us an explanation of the Court's overlooking them, since only in the light of your Honors' decision have the facts to which we shall now direct attention become of controlling importance.

These points are:

1. The allowance of a preferred claim.
2. The allowance of the additional \$10,000 claim for moneys advanced by the Olympia Bank to the Tenino Bank; or
3. If such claim be allowed, the failure to allow the United States National Bank a claim in the same amount against the Tenino Bank.

We shall refer to these in order.

1. *The allowance of a preferred claim.*

As to the funds remitted by the Olympia Bank

Court, that the funds were not traced into the possession of the Centralia Bank but were remitted to various other banks. As to the \$2,203.91, Your Honors allowed a preferred claim on the ground that this fund was traced into the Centralia Bank. We think that the application of the same reason which denied a preferred claim as to the rest of these funds should operate to deny a preferred claim as to this amount also.

The items making up the total of \$2,203.91 are set forth in the transcript, p. 158, and are as follows:

August 25.....	\$ 160.38
" 26.....	255.95
" 26.....	358.10
" 27.....	147.25
" 28.....	147.00
" 31.....	216.60
" 31.....	52.00
September 1.....	56.50
" 2.....	338.30
" 2.....	94.65
" 5.....	377.18
Total	<hr/> \$2,203.91

Upon the face of the exhibit just quoted, appearing at page 158 of the transcript, your Honors' ruling might seem to be justified, but turning to page 224 *et seq.*, where these various remittances are set forth

part—on various banks in the State of Washington and elsewhere. There is not the slightest suggestion *that the United States National Bank ever received one dollar in actual money upon any of these checks*, and we think it clear that, under authorities already so well known to your Honors as not to require citation, the Olympia Bank would not be entitled to a preferred claim as to these amounts, *without showing that they were not only collected by the bank but came into the hands of the receiver*. Proof on both of these points is entirely lacking. The probabilities are, of course, that they were transmitted to other banks and used for the purpose of paying the debts of the United States National Bank. But we need not speculate as to this. The burden is on the plaintiff under all the authorities to prove that we received their proceeds.

In *Empire State Surety Company v. Carroll County*, 194 Fed. 593 (C. C. A. 8th Ct.), where precisely similar facts were involved, at page 606 the Court says, referring to a contention that the plaintiff was entitled to a preferred claim as to the proceeds of certain checks deposited on the last day the bank was open:

“But this record has been searched in vain for any evidence that the checks for the \$1,602.88 deposited on the last day the bank was open ever

derived from them ever went into the \$5,912.05, or into the hands of the receiver. Proof that these checks augmented the cash that went into the hands of the receiver, or that they produced cash which he obtained, was indispensable to any preference on their account."

Referring to a similar contention, the Oklahoma Court says, in *Cherry v. Territory*, 89 Pac. 190, page 191:

"It is not contended that the particular checks and drafts deposited went into the hands of the receiver, *nor does the evidence show that the proceeds therefrom were received by him. Until this is shown, the amount of the checks cannot be allowed as a preferred claim.*"

Upon the facts as they actually appear in the record, though not upon the facts as stated in your Honors' opinion, your holding is, we believe, inconsistent with your recent decisions in *Titlow v. McCormick*, 236 Fed. 209, and *Titlow v. City of Centralia*, 240 Fed. 93.

Further than referring to the case of *Schuyler v Littlefield*, 232 U. S. 707, 58 L. Ed 806, (followed by this Court in the *McCormick* case), upon the point that the burden of proving, beyond doubt, the identification of the property to which a preference is claimed is upon the claimant, and to the leading case of

consideration by your Honors, but refer to the authorities cited in our briefs in the *McCormick* and *City of Centralia* cases.

The Court will note that four of the checks aggregating \$317 (see Tr. 224, first item; 225, first item; 226, last item; 234, second item), were on the United States National Bank itself. As to this it is plain under the authorities already cited (see *Carroll County* case, 194 Fed. at p. 606; also *American Can Co. v. Williams*, 178 Fed. 420) that no preference can be claimed, since they were obviously used in paying the debts of the United States National Bank to the depositors who drew them.

2. *The allowance of the additional \$10,000 claim for moneys advanced by the Olympia Bank to the Tenino Bank.*

The basis of your Honors' decision on this point is that you find an indebtedness existing from the Centralia Bank to the Tenino Bank at the time Gilchrist made this alleged request of Hays to send funds to Tenino. Your Honors, after discussing other points having a possible bearing upon this feature of the case, say:

"However that may be, the controlling facts are that the Centralia Bank was indebted to the Tenino Bank. The Olympia Bank was not. The

And again.
"The funds so remitted were properly chargeable against the Centralia Bank as evidencing *an indebtedness from that bank to the Olympia Bank*, and it follows that the claim of the Olympia Bank against the Centralia Bank should be allowed."

We shall not burden your Honors with a further discussion of the somewhat conflicting testimony in regard to this matter. It is discussed and largely set out in full at pages 51-60 of our brief. The point that we call attention to here is that the supposed indebtedness from the Centralia Bank to the Tenino Bank, which constitutes the basis of your decision upon this point, has, *under your Honors' ruling in this very case upon the appeal of the Tenino Bank*, no foundation in reality; your Honors have yourselves decided that this indebtedness either *did not exist* or was much less than the decision upon this feature of the case assumes.

The Court inclines to credit Blumauer's testimony upon this point on account of its definiteness, and at page 9 of your typewritten opinion you set forth the various amounts which he testifies the Centralia Bank owed the Tenino Bank on the various dates at which the transactions in question occurred. Now Your Honors have held in this very appeal that the

been willing to contend. Your Honors hold with our contention that the Tenino Bank is chargeable with certain drafts of the Tenino Bank upon Centralia for \$2,500, payable to a Portland bank, and with a further sum of \$5,000 charged by the Centralia Bank to Tenino on account of the W. Dean Hays note. *Neither of these transactions was ever shown upon the Tenino Bank's books, from which Blumauer was testifying, or has been admitted by the Tenino Bank as a proper charge until your Honors' decision established both as such.*

Our opponents say, at page 53 of their opening brief (referring to charging the \$5,000 Hays note on the books of the United States National Bank to the State Bank of Tenino), "No entry of this transaction ever was made on the books of the State Bank of Tenino. (Tr. 108.)"

As to the \$2,500 drafts, these, as appears from page 187 of the transcript of the record, were charged by our bank to Tenino on March 5, May 23, May 25, and July 30, 1914. But Blumauer testifies (Supp. Tr., p. 403), "The Tenino Bank made no record of it at all (this \$2,500 in drafts). After I sent the drafts away, that was all there was to it. I made no record of it. As near as I can recollect there was no record in the Tenino Bank that these drafts were sent."

books. Therefore, \$7,500 should be deducted from each of the balances that he claimed the Centralia Bank owed Tenino, so that, on September 12th, when the sum of \$6,000 (a part of this \$10,000), was sent by Olympia to Seattle for Tenino (Tr. 157), the Tenino Bank's books should have showed an indebtedness of *only* \$1,500 from Centralia to Tenino, instead of \$9,000 as he testifies. On the 14th the date Tenino charged the \$6,000 to us (Tr. p. 197), Tenino's books should have showed an *overdraft* of \$201, instead of a credit of \$7,299, as Blumauer testifies (Tr. 83). On the 15th, when the additional \$2,000 was sent to Seattle in the same manner, Tenino had an *overdraft* of \$500 with Centralia, instead of a credit of \$7,000 as Blumauer testifies. And on the 18th, the date the remaining \$2,000 was transmitted to Seattle for Tenino, Tenino, according to its own books, less this deduction, had a credit of *only* \$1,500 with Centralia, instead of \$9,000, as Blumauer testifies.

Thus, on none of those dates, under facts now admitted, was the Centralia Bank indebted to Tenino for anything like the sum transferred to Seattle for Tenino, and on the date of one of the transfers, September 15th, Tenino was actually overdrawn \$500. This

We feel that, with this element out of the case, there can be no question as to these funds having been advanced by Hays in order to help out the Tenino Bank. Blumauer testifies positively (Supp. Tr., p 117) that he had no instructions from anybody about it. That leaves Dysart and Gilchrist's testimony unchallenged except so far as Hays' evasions and self-contradictions may tend to controvert it.. For further discussion of the matter, we respectfully refer the Court to pages 51-60 of our principal brief.

As to the facts discussed by the Court concerning the dealings between Hays and Gilchrist, involving the stock of the Tenino Bank, we submit that these facts tend to strengthen our contention rather than to weaken it. Your Honors say, "Gilchrist did not deny that he had agreed to purchase Hays' stock, but he said that the negotiations were pending and not consummated. It thus appears that Gilchrist was interested in the welfare of the Tenino Bank." This is possibly true, but it has never been disputed that this interest, if any, *was a purely personal one of Gilchrist's*, which, of course, Hays, the other party to the transaction, knew all about. He therefore knew necessarily that Gilchrist could not pledge the credit of the United States National Bank for his own in-

This, we think, greatly strengthens Gilchrist's version of the transaction, that he explicitly told Hays that "it was up to him" (Hays) to take care of the Tenino Bank.

3. *If the \$10,000 item covering the Tenino transaction is allowed the Olympia Bank, the Centralia Bank should be allowed credit in the same amount against Tenino.*

This is a proposition which we believe requires no elaboration. If your Honors adhere to your ruling that the Centralia Bank is chargeable with the \$10,000 advanced to Tenino by Olympia, then this constitutes a new item in favor of Centralia in its account with Tenino, and the Centralia Bank should necessarily be allowed a credit in the same amount against the Tenino Bank. Unless your Honors make this correction, however, this feature of the decree will doubtless cause misunderstanding between the parties, and uncertainty and embarrassment upon the part of the Court below in making the modification which you have directed. In order to obviate this possibility, we think this correction should be made in the event that you finally hold us liable to Olympia for this \$10,000 item.

We believe that all the particulars of your Honors' opinion to which we have directed attention can be

that only through such means can the desired changes
be made.

We therefore respectfully petition your Honors
to modify your decree in the particulars above noted;
and, if necessary to effect this purpose, that a rehear-
ing, so far as may be necessary to reconsider the points
which we have just discussed, be granted.

Respectfully submitted,

BAUSMAN, OLDHAM & GOODALE,
Solicitors for Appellees.

WALTER L. NOSSAMAN,
of Counsel.



FOR THE NINTH CIRCUIT

FRANK P. McKINNEY, as Receiver of the OLYMPIA BANK & TRUST COMPANY, a Corporation,

Appellant,

vs.

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Appellees,

and

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Appellants,

vs.

UNITED STATES NATIONAL BANK OF CENTRALIA, a Corporation, and A. R. TITLOW, as Receiver of the UNITED STATES NATIONAL BANK OF CENTRALIA,

Appellees,

and

ROY A. LANGLEY, as Receiver of the STATE BANK OF TENINO,

Appellant,

vs.

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PETITION FOR RE-HEARING

C. WILL SHAFFER,
Solicitor for Interveners.

P. M. TROY,
R. M. STURDEVANT,

Solicitors for Receiver of the Olympia Bank & Trust Company.

The Washington Standard Print  Olympia, Washington.

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JUN 21 1917

F. D. Monckton,
Clerk.

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cause, and to modify the same in accordance with the prayer hereof.

INTERVENERS' POSITION.

Your petitioners, the interveners, after the deluge of financial disaster had spent its crest and they had surveyed the wreckage, demanded that the receiver of the Olympia bank should claim from the ruins:

First: That the basis of credit for the \$50,000 certificate was a valid bankable basis, and the certificate estopped the bank to question it;

Second: That the investigation made by the State Bank Examiner and the charter issued by him were conclusive to all the world as to that credit and the lawful payment of the capital stock; and

Third: That if the above propositions were not governing, then a fraud had been practiced upon the state and the creditors by the officers of the United States National Bank, and such bank had been the beneficiary of that fraud and as such must make restitution.

The receiver of the Olympia bank refused the contentions of interveners as set forth, whereupon they sought and obtained an order from the court appointing such receiver, the right to intervene. In their

above, as the first two named were in substantial accord with the claims of the receiver.

COURT FINDS FOR INTERVENERS.

With their cause of action your Honors find:

“that the authority of the Olympia bank to open its doors and engage in a banking business was fraudulently obtained, that its capital was not paid in cash as required by law, and that the cashier and manager of the Centralia bank participated in the fraud . . . Hays had no right to receive the deposits, and no right to transfer them to another bank, nor had the Centralia bank the right to receive them.”

But your Honors hold we are not entitled to a preference by reason of the fact that the parties who perpetrated the fraud, by the ingenuity of their fraudulent transactions, put us within a rule of law that bars us from a preference—they took the bulk of our deposits by a circuitous route instead of directly to the Centralia bank.

In support of your inability as a matter of law to give us a preference, your Honors cite the cases of:

Titlow vs. McCormick, 236 Fed. 209, and

United States National Bank vs. Centralia,
240 Fed. 93.

distinguishable from the case at bar. In those cases no element of fraud appears. Our case is based entirely upon fraud.

“Hays had no right to receive the deposits, and no right to transfer them to another bank, *nor had the Centralia bank the right to receive them.*”

Whereas in the cases cited, the transactions by which the United States National Bank came into possession of the funds in dispute were perfectly legitimate, were not tinctured with fraud, and subsequent creditors of the United States National Bank would have a right to consider them as existing assets and liabilities of the bank.

FRAUD CHANGES RULE.

Not so with our funds. The Centralia bank got them by fraud and although not all traceable directly into the receiver's hands, they did go to swell the assets that came into his hands, and therefore the general creditors are getting the benefits of them.

That there was fraud is beyond dispute—the lower court found so and this court finds accordingly.

“As between the immediate parties fraud makes *all things void* which are done under its

there being fraud, then a trust resulted.
“A court of equity converts a party who has obtained property by fraud into a trustee for the party who is injured by the fraud.”

Underhill on Trusts, p. 185 (Am. Ed. 186.)

And Perry says, a constructive trust always arises from actual fraud practiced by one man upon another.

See Perry on Trusts, Sec. 168.

Also Sec. 171, page 271.

Also Sec. 173, page 274.

Also Encyc. U. S. Supreme Court Repts, Vol. 11, p. 692.

Also Encyc. U. S. Supreme Court Repts, Vol. 6, p. 422.

These last citations are not unsupported by your Honors' opinion in this case. They are cited, however, in further support of petitioners' position.

PREFERENCE ONLY ISSUE.

The only issue here is the right of a preference to the remittances the Olympia bank sent to correspondent banks of the Centralia bank. There are several reasons why we think these remittances should be treated the same as the remittances sent direct to Centralia.

tlement with these correspondent banks; thus he takes credit for one hundred cents on the dollar, but by the decision will probably pay us back fifty. This statement can easily be verified by the records of the Centralia receiver.

RECEIVER ADMITS GETTING DEPOSITS.

Second: The Centralia receiver admits he received these remittances, his books show it, and he waived the necessity of us proving it at the trial. We think the rule here should apply which this court quotes so approvingly in the *Titlow vs. McCormick*, 236 Fed. 209, to-wit: *The Merchants' National Bank vs. School District*, 94 Fed. 705. There the court said:

“It is undisputed that the money belonged to the school district and that it was deposited with the bank’s correspondent in Boston and that, upon receipt of intelligence of such deposit, the Helena bank opened the account, and entered into the agreement which was indicated in the findings of the master. *The Helena bank, if it had not then the money in its actual possession, had it under its control, and could lawfully in due course*

Third: The remittances were made each day under the direct orders of the Centralia bank. The record shows that practically every day and sometimes several times a day, Gilchrist would call Hays on the phone or drive over to see him about deposits and would direct him where to send them. These remittances were all under the control of the Centralia bank before they left the Olympia bank.

REMITTANCES WERE TO CENTRALIA'S AGENT.

Fourth: The remittances were to the correspondent banks of the Centralia bank, which banks were the agents of the Centralia bank. And as your Honors approve in the McCormick case again the language in the School District case:

“Neither the bank nor the receiver is now in a position to say that the *money received by the bank's agent*” (its correspondent in Boston) “*was not actually received by the bank.*”

See *Titlow vs. McCormick*, 236 Fed. on p. 213.

PUBLIC FUNDS.

Let us illustrate these claims by any one remittance. About \$30,000 of the remittances were public funds (another reason why this amount should be

Michie says, that public funds are entitled to a preference in most jurisdictions.

Michie Banks & Banking, page 614.

ILLUSTRATION.

But take the \$15,000 deposited by the State Treasurer:

Hays was urged by Gilchrist to get it;

He was told by Gilchrist where to send it. Hays then acted as the agent of Gilchrist, the manager of the Centralia bank;

It was sent to the correspondent, or agent of the Centralia bank and there credited to the Centralia bank, from the Olympia bank;

Notice of the remittance from the correspondent or agent bank was received by the Centralia bank and Olympia credited therewith. Centralia's assets were increased to the same extent as if Olympia had deposited the State Treasurer's draft directly in the correspondent bank and then sent a draft on the correspondent bank as a remittance to the Centralia bank;

THE FACTS.

Centralia received the benefit of the remittance,

Centralia by fraud puts Olympia in a position to receive the deposit, directs the receiving of the deposit, takes charge of it as soon as it is received, directs what agent to whom it shall be remitted, the agent credits the Centralia bank for the remittance, Centralia charges its agent and credits Olympia. Centralia uses the remittance to the relief of its creditors, using it for the full face, getting the full benefit of her fraud, without restitution to Olympia.

TENINO ACCOUNT.

The same is true of every other remittance. Take the Tenino account. The record shows Centralia owed Tenino, but not now; the receiver of the Centralia bank will present the receiver of the Tenino bank a claim for \$10,000 and by this decree has it established. Nor does the fact that Tenino will be unable to pay one hundred cents on the dollar, change the equities. Centralia would have been out \$10,000 cash had Centralia sent Tenino the money. But Olympia sent it for Centralia. So Centralia is not hurt any more by giving us now one hundred cents on the dollar, for what we sent to Tenino, than she would be had she sent it directly to Tenino.

out of our remittances and is paying us fifty or so.

Nobody is hurt if we are all placed back where we were before Centralia engineered her fraud; the creditors of the Centralia bank are just where they would have been and we are in the same position except for the costs we were put to in starting our bank and in winding it up.

TRACING FUNDS UNNECESSARY.

We think that the tracing of the funds directly into the bank is not necessary where the element of fraud is present.

But even if it is necessary to trace them, the receiver's admission that he got them, the fact that their agent, their correspondent, did actually get them as in the School District case *supra* is sufficient in law to hold that they went directly to swell the assets of the receiver.

“Neither a bank nor its receiver can deny the receipt of money deposited with the bank as a trust fund on the ground that no money was actually deposited, where it received and accepted credit for the amount with a correspondent and received the money thereon in due course of business.”

Michie on Banks & Banking, p. 904, Sec. 121

of one of its customers, to a third person, for the purpose of misleading him, it is liable for deceit if loss results."

1 Michie Banks and Banking, 683.

"Where a bank, through the fraud of its agent, obtained certain assets through another bank, though it is not liable criminally, yet it is liable civiliter, as it appointed the end, though not the means, and it cannot retain any advantages which had been gained through the agent."

Johnston vs. Southwestern R. Bank, 3 Strob.
(S. C.) Eq. 263.

EQUITY.

The fundamental principle of equity that where one of two innocent parties must suffer by reason of a fraudulent transaction it must be the one whose acts or relations made the fraud possible, will be reversed if your Honors' decision stands. The creditors of the Centralia bank whose agent made it possible by a false credit to deceive the depositors of the Olympia bank get the full benefit of our defrauded depositors' money while the defrauded depositors get but half their money back.

lars in assets. By a fraud a third party is brought in with a thousand dollars in assets which went directly into the bank. On a forced liquidation, equity then says to the third party who was induced by fraud to put in his money, "you may have your money back, as these other creditors shall not profit by a fraud practiced upon you"; and to the other creditors, "you shall have only what would have been rightfully yours had not this fraud been committed."

But suppose the third party was by the ingenuity of the perpetrators of the fraud induced to give his assets to the agent of the perpetrator. The agent then delivers the assets to the principal. Now on a forced liquidation equity says to the first creditors: "By reason of a fraud practiced on a third party you may not only have what would have been yours had this fraud not have been practiced, but you may have a large share of the assets so acquired by fraud"; and to the defrauded party, "By reason of the defrauding party inducing you to hand your money to his agent, from whence he then obtained it, he and

We hope your Honors will pardon the simple illustration, but we think it fits the case if your decision is to stand. It may be the law, but it does not appear as equity.

“Although courts of equity have not made general definitions stating what is fraud and what is not, they have not hesitated to lay down broad and comprehensive principles of remedial justice, and to apply these principles in favor of innocent parties suffering from the fraud of others. These principles though firm and inflexible, are yet so plastic that they can be applied to every case of fraud as it occurs, however new it may be in its circumstances. The leading principle of this remedial justice is by way of equitable construction to convert the fraudulent holder of property into a trustee, and to preserve the property itself as a fund for the purpose of recompense. *In investigating allegations of fraud, courts of equity disregard mere technicalities and artificial rules, and look only to the general characteristics of the*

“An adverse doctrine would lead to the conclusion that the grossest fraud might be practiced and fully proved in our courts of justice, and the law be found inadequate to relieve. But the arm of the law is not shortened, that it cannot save, and courts and jurors will with eagle eyes trace fraud through its secret and crooked paths, and render both, the agent who appears and the mover, who plots in darkness, amenable.”

Windover vs. Hopkins, 2 Tyler (Vt.) I.

RECEIVER'S RIGHTS.

The receiver has no advantages the bank did not have, has no defenses the bank did not have.

“It may be stated at the outset that the receiver stands in the place of the bank whom he represents and has only such rights as it had, ‘so that the rights of third parties are not increased, diminished or varied by his appointment.’ In other words, he takes only such title to the assets as the bank itself had, subject to all the equities which existed against the assets in the hands of the bank. Therefore a bank receiver can not

fruits.

I Michie Banks & Banking, p. 542.

“Receivers, for the purpose of closing its concerns, have no rights superior to those which the bank would have had, if the management of its affairs had continued with its directors.”

Lincoln vs. Fitch, 42 Me. 456.

If Gilchrist himself could not have successfully for his bank denied us a return of our funds after admitting that he got them, either directly or indirectly, then the receiver can not. The receiver can only do what his bank could do, and if his bank could not rescind without restitution, then the receiver can not.

Bennett vs. Judson, 21 N. Y. 238.

ASSETS INCREASED IS RULE.

If your Honors please, we think that in those jurisdictions which adhere most strictly to the rule of tracing funds or assets in order to establish a preference, none of them go as far as the decision now sought to be modified. Most of the text writers in support of the tracing rule, cite Iowa, yet Iowa says only:

“Under these authorities and many more that might be cited, the creditor who asks that his

estate, and that it may be taken therefrom without impairing the rights of general creditors.”

First State Bank vs. Oelke, 149 Iowa 662 p. 667.

It is not asserted it should come directly. But does it come and swell the assets?

We have shown Centralia got our money. The receiver admits it (except the \$10,000 to Tenino). The assets were increased, and our preference will not affect the general creditors beyond what they would have gotten had no fraud occurred.

If there is any doubt about any of these remittances not finally reaching Centralia, directly or indirectly, the doubt can be settled by returning the case to the lower court to ascertain that fact.

RESULTS.

Centralia does not return Hays' notes. Hays is out of the state, outside of the jurisdiction of our courts. Several of the notes given to Hays by other would-be stockholders are probably not collectable. Several of the stockholders will not respond to a judgment on their statutory liability. In fact, if the bank was fraudulently organized, it was not organized at all in law, hence it is doubtful whether there

Days had no right to receive deposits, he had no right to negotiate the notes, the notes may be void. The misled depositors of the Olympia bank have little to look to except what will be received from Centralia. They were defrauded, and shall they suffer while the depositors of the Centralia bank reach in and take a part of the funds the defrauded depositors of the Olympia bank put into the Centralia bank?

PRAYER.

We think nobody is hurt except those who will be stuck for the costs of the birth and struggling death of the Olympia bank, if your Honors modify your opinion to the effect of giving us a preference to the full extent to which our deposits swelled the assets of the Centralia bank, and the withdrawal of the same will not reduce the remaining assets below what they would have been had the Centralia bank not made possible such fraud.

In accordance with the above, we respectfully pray.

C. WILL SHAFFER
Solicitor for Interveners.

The above petition is approved and joined in by

R. M. STURDEVANT,

*Solicitors for Receiver of the Olympia Bank & Trust
Company.*

Circuit Court of Appeals

For the Ninth Circuit

WILLIAM PAPPAS,

Plaintiff in Error,

VS.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of the Record

*Upon Writ of Error From the United States District
Court for the District of Idaho, Eastern Division.*

SYMS-YORK CO., PRINTERS & BINDERS, BOISE 42889

Filed

DEC 26 1916

F. D. Monckton,
Clerk.

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District of Idaho;

Boise, Idaho;

Attorneys for Defendant in Error.

UNITED STATES OF AMERICA,

vs.

WILLIAM PAPPAS,

Defendant.

INDICTMENT.

Charge: White Slavery. Violation Act of June 25, 1910, 36 Stat., Chap. 395.

The Grand Jurors of the United States of America, being first duly impaneled and sworn, within and for the district of Idaho, Eastern Division, in the name and by the authority of the United States of America, upon their oaths, do find and present:

That heretofore, to-wit: On or about the 15th day of July, A. D. 1916, at Rock Springs, State of Wyoming, William Pappas did then and there wilfully, unlawfully and feloniously transport, and cause to be transported, one Zella Pappas, a woman, as a passenger by and upon a certain route of interstate commerce of a certain common carrier engaged in interstate commerce, to-wit, Oregon Short Line Railroad Company, from the said Rock Springs, Wyoming, to Pocatello, in the County of Bannock, State and District of Idaho, and within the jurisdiction of this court, for the purpose of prostitution of her, the said Zella Pappas.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America,

Zena Pappas,

H. L. Hartvigsen,

Robert Lewis,

Leon Bone,

Geo. Smith,

Pearl Collins,

Chas. A. Baldwin,

Mrs. Joe Dyett.

Endorsed: Filed Oct. 10, 1916.

W. D. McReynolds, Clerk.

MINUTE ENTRY.

At a stated term of the District Court of the United States for the District of Idaho, held at Pocatello, Idaho, on Wednesday, the 11th day of October, 1916.

Present:

Hon. Frank S. Dietrich, Judge.

THE UNITED STATES,

vs.

WILLIAM PAPPAS.

Criminal No. 479.

Comes now the United States District Attorney with the defendant and his counsel, R. M. Terrell, Esq., into court, the defendant to be arraigned upon the indictment heretofore presented against him by the grand jury, charging the defendant with the crime of white slavery. The defendant, in answer to the court, stated that his true name was William Pappas, the reading of the indictment was waived and the defendant furnished with a true copy thereof upon order of the court.

The defendant waiving time in which to plead, asked leave of the court to plead at this time, where-

thereupon set the cause for trial at 10 o'clock A. M. Tuesday, October 17th, 1916, to follow the trial of cause No. 476.

Thursday, October 19, 1916.

THE UNITED STATES,

vs.

WILLIAM PAPPAS.

Criminal No. 479.

This cause came regularly on for trial before the court and a jury; the Assistant United States District Attorney with the defendant and his counsel, R. M. Terrell, Esq., being present. The Clerk under direction of the court proceeded to draw from the jury box the names of twelve persons, one at a time, written on separate slips of paper, to serve as a jury in this trial. There being an insufficient number of names in the box to complete the jury, the court directed that a special venire issue to the Marshal, directing him to summon six persons having the qualifications for trial jurors, to appear for the completion of the panel. On the same day the Marshal made return of the venire, showing service upon six persons to appear at this time for service as trial jurors; whereupon the Clerk under directions of the court placed the names of persons so summoned in the jury box, and proceeded to draw therefrom for the completion of this panel. W. N. Hayslip and J. M. Ervin, whose names were drawn from the

A. Hood, whose name was drawn from the jury box, who was sworn on voir dire, examined and passed for cause, was excused by the court upon the plaintiff's peremptory challenge; following are the names of the persons whose names were drawn from the jury box, who were sworn on voir dire, examined and accepted by counsel for both the plaintiff and defendant, and who were sworn by the clerk to well and truly try said cause and a true verdict render according to the law and evidence, to-wit: L. F. Paris, C. H. Toomer, Frank E. Smedley, William M. Dye, E. T. Young, N. D. Thatcher, F. Corbett, David W. Jones, Edward Grunig, E. G. Wilkins, R. M. Wilson and Dick Arnold.

The indictment was read to the jury, and they were informed of the defendant's plea of not guilty heretofore entered thereto. Whereupon Zella Papas was sworn as a witness on the part of the plaintiff. Defendant's counsel at this time offered objections to witness testifying herein, on the ground that the witness is the wife of the defendant; the court, after hearing counsel upon the objections, overruled the same. The witness was thereupon examined, and Pearl Collins, Violet Hall, Grace Brown, Robert Lewis, H. L. Harkinson and Charles A. Baldwin were sworn and examined as witnesses and documentary evidence was introduced on the part of the plaintiff, and here the plaintiff rests.

Whereupon the court, after admonishing the jury,

THE UNITED STATES,

VS.

WILLIAM PAPPAS.

Criminal No. 479.

This cause came regularly on for further trial before the court and jury. The Assistant United States District Attorney, with the defendant and his counsel being present, the jury was called by the Clerk and all found present.

Whereupon Zella Pappas was recalled, and Edward Marston, John Pattos, William Pappas and L. F. Johnson were sworn and examined as witnesses on the part of the defendant, and here defendant rests. On rebuttal Leon Bone was sworn and examined on the part of the plaintiff, and here both sides closed. After the argument of counsel, the jury was instructed by the court, and they retired to deliberate of their verdict, having been placed in charge of J. H. McMillan, a bailiff duly sworn.

On the same day the jury returned into court; the defendant and counsel for both the plaintiff and defendant being present, the jury was called by the Clerk and all found present. The court asked the jury if they had agreed upon a verdict, and they, through their foreman, replied that they had, and thereupon presented to the court their written verdict, which was in the words following:

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM PAPPAS,

Defendant.

VERDICT.

We, the jury in the above entitled cause, find the defendant guilty on the first count in the indictment; and we find the defendant guilty upon the second count; and we find the defendant guilty on the third count.

WM. M. DYE, Foreman."

The verdict was recorded in the presence of the jury, then read to them and they each confirmed the same. The court fixed 12 o'clock M., October 21st, 1916, as time for pronouncing judgment herein, excused the jury from further consideration of the cause and discharged them for the term.

Saturday, October 21, 1916.

THE UNITED STATES,

vs.

WILLIAM PAPPAS.

Criminal No. 479.

Comes now the Assistant United States District Attorney with the defendant and R. M. Terrell, Esq., his counsel, into court, this being the time fixed by the court for the pronouncing of judgment herein. Defendant's counsel moves the court for an order in arrest of judgment, which motion was denied. The court thereupon asked the defendant if he had any

it was thereupon ordered and adjudged that the defendant be confined in the United States Penitentiary at McNeil's Island, for a term of twenty (20) months upon each of the three counts in the indictment, the sentence upon each count to run concurrently with the other two.

(Title of Court and Cause.)

VERDICT.

We, the jury in the above entitled cause, find the defendant guilty on the first count of the indictment; and we find the defendant guilty upon the second count; and we find the defendant guilty on the third count.

WM. M. DYE, Foreman.

Filed Oct. 20, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

JUDGMENT.

Now, on this 21st day of October, 1916, the United States District Attorney, with the defendant and his counsel, R. M. Terrell, Esq., came into Court; the defendant was duly informed by the Court of the nature of the indictment found against him for the crime of white slavery, committed on the 15th day of July, A. D. 1916, of his arraignment and plea of "Not guilty as charged in said indictment," of his trial and the verdict of the jury on the 20th day of October, A. D. 1916, "Guilty as charged in the in-

ment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court.

Now, therefore, the said defendant having been convicted of the crime of white slavery,

It is hereby considered and adjudged that the said defendant, William Pappas, be imprisoned and kept in the United States Penitentiary at McNeil's Island, State of Washington, for the term of twenty (20) months upon each count in the indictment, said sentence to run concurrently, and it is further ordered and adjudged that said defendant be and is hereby remanded to the custody of the United States Marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof.

(Title of Court and Cause.)

BILL OF EXCEPTIONS.

(Criminal.)

BE IT REMEMBERED, that on the trial of this cause, in the above entitled court, at the October term, 1916, of said court, the Honorable F. S. Dietrich, presiding when the following proceedings were had, to-wit:

The jury was impanelled and sworn according to law; and thereupon the following proceedings were had, prior to the introduction of any testimony herein:

MR. TERRELL: Might it be understood, your

MR. TERRELL: And also at this time, your Honor, for the purpose of being sure not to waive the rights of the defendant and to require the District Attorney to elect between these counts, it seems that some of the authorities hold that the motion must be made at one stage of the proceedings and some hold that it must be made at another; and therefore, so as not to waive the right, I desire to move formally to require the District Attorney to elect as to which one of the counts he elects to stand upon.

THE COURT: The motion will be denied.

MR. SMEAD: I will call Zella Pappas.

THE COURT: Gentlemen of the jury, to this indictment, which has been read to you, the defendant has pleaded not guilty.

Thereupon, plaintiff, to sustain the issue upon its part, among other, offered the following testimony of the following witnesses, as evidence in chief:

ZELLA PAPPAS, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

By MR. SMEAD:

Q. State your name, please.

A. Zella Pappas.

Q. Where do you live?

A. My home is in Rock Springs.

MR. TERRELL: If your Honor please, may I at this time be permitted to ask this witness one question

THE COURT: Yes.

MR. TERRELL: Q. Were you on the 15th day of July, 1916, married to the defendant in this case?

A. The 29th of June.

Q. Of June?

A. Yes, sir.

Q. And have you been man and wife ever since? Has there been any divorce?

A. No, sir.

Q. You are and have been since the 29th day of June, last, the legal wife of this defendant?

A. Yes, sir.

MR. TERRELL: Upon that showing, your Honor, we object to any testimony being given by this witness, upon the grounds that she is the wife of the defendant and that she cannot be made to testify or cannot testify against the defendant without his permission, which permission, as his counsel, I withhold. I have some authorities which I desire to submit to the Court on that question, if your Honor please (citing authorities and reading therefrom).

After some argument on the question presented, the Court dismissed the jury with the usual admonition as to their conduct during the recess of the Court and a recess was taken until 7:45 P. M., on the 19th day of October, 1916.

Upon the reconvening of the court at 7:45 P. M., October 19th, 1916, and after further argument and consideration, the Court overruled the objection of

THE COURT: Let the witness come forward.

ZELLA PAPPAS, heretofore duly sworn as a witness on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

By MR. SMEAD:

Q. Where do you live, Mrs. Pappas?

MR. TERRELL: May I ask the witness one further question on her voir dire, your Honor?

THE COURT: Yes.

MR. TERRELL: Q. Mrs. Pappas, as the wife of the defendant, Will Pappas, do you object to testifying in this case?

THE COURT: No, you can't ask her that.

MR. TERRELL: I beg your pardon, your Honor.

THE COURT: I thought it was some other matter, but you can't suggest it to her.

MR. TERRELL: That is the only question I desire to ask, your Honor. I thought under the Court's statement that might make a difference.

THE COURT: Yes. Doubtless I didn't understand you. The objection raised to the competency of the witness to testify will be overruled.

MR. SMEAD: Q. Where do you live now, Mrs. Pappas?

A. The Dearborn.

Q. In Pocatello?

A. Yes.

Q. When did you first come to Pocatello?

Q. This year?

A. Yes.

Q. Who came with you, if anybody?

A. My husband.

Q. Is that the defendant?

A. Yes.

Q. Where did you come from?

A. Green River, Wyoming.

Q. How long did you remain in Pocatello at that time?

A. One week.

Q. Where did you stay?

A. At the Crow Hotel.

Q. Where did you go then?

A. I went back home.

Q. Where do you mean by home?

A. Rock Springs.

Q. Wyoming?

A. Yes, sir.

Q. How long were you there?

A. A week.

Q. While you were there did you receive any communication from the defendant, your husband?

A. Yes, sir.

Q. Of what nature?

A. I wrote to him, is all, and he wrote to me, that's all.

Q. He wrote to you?

A. No, sir.

Q. What did you do with it?

A. I haven't got it?

Q. Did you destroy it, or lose it, or what?

A. No, I left it home, I think.

Q. You mean at Rock Springs?

A. Yes.

Q. You haven't it available at this time?

A. No.

Q. Do you know where it is?

A. No, sir.

Q. What did your husband say in that letter that you refer to? What did he say to you in substance in that letter, Mrs. Pappas?

A. He just wrote to me like any other husband would, I guess.

Q. Do you remember anything in particular that he said?

A. No, sir.

Q. Was there anything in that letter besides the written matter?

A. No, sir.

Q. Did you receive more than one letter while you were at Rock Springs?

A. I received two.

Q. Did you receive any registered letter?

A. I received money to come back home on.

Q. Was that in a registered letter?

A. Yes, sir.

Q. Who was that letter from?

A. From my husband.

Q. The defendant?

A. Yes.

Q. Did you leave that letter in Rock Springs, or do you know where you left it?

A. No.

Q. Do you know where it is now?

A. No.

Q. What did that letter say?

A. Just telling me here is money to come home on, is all.

Q. By "home" what do you mean now?

A. Pocatello.

Q. Idaho?

A. Yes, sir.

Q. What did you do with that money?

A. Bought a ticket.

Q. Where to?

A. To Pocatello.

Q. Did you buy the ticket at Rock Springs?

A. Yes, sir.

Q. Did you ride on that ticket from Rock Springs to Pocatello?

A. Yes, sir.

Q. Did you meet your husband when you got here, the defendant?

and so I went across the track.

Q. He wasn't at the Crow Hotel?

A. No.

Q. How did you know where to find him?

A. I just went there, is all.

Q. That is over on the east side of the viaduct here in Pocatello?

A. Yes, sir.

Q. How did you happen to go to the Boise Rooming House?

A. I knew he always stopped there when he was in town.

Q. How did you know that?

A. Because he told me.

Q. Did you find him there?

A. No, he wasn't there; he wasn't in.

Q. Did you stay there?

A. No, sir; I went down town to look for him.

Q. Then where did you go, the two of you go?

A. Went up to our room.

Q. The two of you?

A. Yes, sir.

Q. That is, the rooming house, the Boise House, you referred to before, on the east side of the viaduct, is it?

A. Yes, sir.

Q. How long did you stay at that rooming house from that time on?

A. A month ago.

Q. How long ago?

A. A month.

Q. A month ago?

A. Yes.

Q. What were you doing at that Boise Rooming House? What was your business there, if you had any?

A. I was working there; chambermaid.

Q. Chambermaid?

A. Yes.

Q. Do you know a woman by the name of Pearl Collins?

A. Yes, sir.

Q. Was she stopping there at that time?

A. Yes, sir.

Q. Was Violet Hall stopping there at that time?

A. Yes, sir.

Q. Was Grace Brown there at that time?

A. Yes, sir.

Q. While you were stopping at the Boise Rooming House were you ever approached by any men with improper proposals?

A. Lots asked me, but I told them no.

Q. By proposals I mean improper proposals—not to embarrass you, but to make it plain in the record, I mean proposals concerning sexual intercourse, were those proposals made to you?

A. Yes, sir, but I told them no.

Q. How many?

A. Two.

Q. Two different men?

A. Yes, sir.

Q. You say you were chambermaid there?

A. Yes, sir.

Q. Did you take care of the rooms in the rooming house, was that the purpose?

A. Yes, sir.

Q. Who conducted that rooming house, if you know?

A. Mrs. Peter Cayias.

MR. SMEAD: You may inquire.

CROSS EXAMINATION:

By MR. TERRELL:

Q. Mrs. Pappas, I didn't get either the question or the answer with reference to two proposals that had been made to you while you were working at the Boise Rooming House. Was that indecent proposals that you refer to, by other men?

A. Yes, sir.

Q. How?

A. Yes, sir.

Q. Did you consent to either of those proposals?

A. No, sir.

Q. Was your husband present at the time?

A. No, sir.

Q. Or about the premises?

Q. Did you ever tell him about them?

A. No, sir.

Q. Where are you living at the present time here in Pocatello?

A. At the Dearborn.

Q. At the Dearborn?

A. Yes, sir.

Q. Rooming or light housekeeping?

A. Rooming.

Q. With your husband?

A. Yes, sir.

Q. What is your husband engaged in at the present time?

A. He works for John Pattas.

Q. In what kind of a business?

A. In the cigar store.

Q. Do you know where that is located?

A. I don't know what that street is. It is on the other side of town.

Q. On Center street?

A. I guess so; I ain't sure.

Q. The same street that the viaduct is on?

A. Yes, sir.

Q. As a matter of fact, it is in what is called the "Trapp Building," just across the alley from the Commercial Hotel, is it not?

A. Yes, sir.

Q. You lived in Rock Springs, Wyoming, Mrs. Pappas, at the time you were married?

Q. You were working there at the time your husband married you?

A. Yes, sir.

Q. And then you came to Pocatello and stayed at the Crow Hotel for a week and went back to Wyoming?

A. Yes, sir.

Q. How long did you remain there before you came back to Pocatello?

A. One week.

Q. I will ask you if at any time during your married life, or before, as far as that is concerned, your husband ever, directly or indirectly, endeavored in any way to get you to lead a life of prostitution or debauchery?

MR. SMEAD: I object to that question on the ground that, as stated, directly or indirectly, it is calling for the witness to state a conclusion which the jury is here to draw. I don't object to her stating what her husband may have said to her.

MR. TERRELL: I will change the form of the question. I hardly think that could be said to be a conclusion.

Q. I will ask you this question, and take the ruling of the court. I will ask you, Mrs. Pappas, if your husband at any time during your acquaintance with him, either before or after marriage, has ever suggested to you that you engage in the practice of prostitution?

yourself and Mr. Pappas engaged in the practice of prostitution?

A. Since I have been married?

Q. Since you have been married.

A. No, sir.

Q. Have you since you have been married with the defendant engaged in any immoral practice?

A. I don't know.

Q. Do you understand what that means? I will ask you if, since having been married with your husband, you have frequented or been in and about houses of ill fame, since having been married to your husband, and knowingly been about places of ill fame?

A. I have been in hotels, but that is all.

Q. Have you ever, since having been married to your husband, visited any resorts that you did not think people were living the right kind of lives?

A. No, sir.

MR. SMEAD: I object to this question and answer, and this line of questioning, your Honor, as not proper cross examination, and making the witness his own witness.

THE COURT: Overruled. She has answered.

MR. TERRELL: Q. I will ask you, Mrs. Pappas, if, when you came to Pocatello from Rock Springs, Wyoming, I will ask you to state if you did so wilfully and of your own free will and accord, did you? Did you wish to come?

MR. TERRELL: I think, under the allegations of the indictment, your Honor—that is the reason for the question—it is alleged here that she was persuaded, induced and enticed to come here for a purpose, and I think it would certainly be competent upon cross examination to inquire of this witness as to whether or not those things are true. It is the only way we can get at it.

MR. SMEAD: The act states, however, in so many words, whether with or without the consent of the woman in question, and furthermore the implication in the word “persuade” would be that in coming she would wish to come. That is what the word “persuade” implies; that would be the effect of it.

MR. TERRELL: But there are other words—persuade, induce, entice. There is nobody that can answer that question except the defendant and this witness.

THE COURT: Of course, the answer to this question would not negative the idea of persuading or inducing to come, or enticing to come.

MR. TERRELL: I can see that.

THE COURT: The answer would be quite immaterial, of course. If it is answered in one way, its legal effect would be the same as though it were answered in the other, if I understood the question.

(Question read.)

MR. TERRELL: Q. I will ask you, Mrs. Pappas, to state whether or not the defendant in this case persuaded you to return to Pocatello when you returned the last time?

MR. SMEAD: I object to that as calling for a conclusion of the witness. She can state what was done. She has stated what was done. The conclusion embodied in the word "persuade" is another conclusion, which the jury is here to draw, and not the witness.

THE COURT: Sustained.

MR. TERRELL: Formally, for the purpose of making the record, may I ask another question?

THE COURT: Yes.

Q. Mrs. Pappas, did the defendant in this case induce or entice you to come to Pocatello on the last trip?

MR. SMEAD: That is objected to for the same reasons.

THE COURT: Sustained.

MR. TERRELL: Q. I will ask you to state, Mrs. Pappas, whether or not, in any of these letters which you say you received from your husband, or otherwise, state whether your husband ever said anything to you about returning to Pocatello for the purpose of prostitution?

A. No, sir.

Q. Did you, after you left the town of Rock Springs, and arrived at Pocatello, or after the time

MR. SMEAD: I object to that as immaterial and incompetent, and not tending to prove or disprove any of the issues in this case.

THE COURT: Sustained. The intent of the defendant is the material thing, and not of the witness.

Q. You received money from your husband with which to purchase a ticket to come to Pocatello?

A. Yes, sir.

Q. And as I understand your testimony, you had written to him and requested that it be sent?

A. Yes, sir.

MR. SMEAD: Just a moment. I object to that.

THE COURT: She has already answered it.

MR. SMEAD: I object to it as assuming something that the witness didn't state.

MR. TERRELL: Q. I will ask you to state then whether or not you did request your husband to send you the money?

A. Yes, sir.

Q. And what was the purpose of your making that request for him to send you the money?

A. I wanted to come back.

MR. SMEAD: I object to that testimony, your Honor, as incompetent and immaterial, what her purpose was, and I move to strike out the last question and answer on the ground that any letter written by this witness, if it came into the defendant's possession, would be the best evidence of what she said.

seems to me that there are two elements that must necessarily be taken into consideration. It is true that this defendant is the man charged with crime, but in the charging of this crime against the defendant it must necessarily follow that this witness, his wife, plays an important part in that. Now, the intent of the defendant, it is true, is material, and in one sense of the word is the only material thing, first, whether he transported or caused this girl to be transported, and, second, what was the intent, but I don't see any way of arriving at the intent except to inquire into such facts as I have inquired into by this question and other similar questions. I understand the rule to be that intent is determined ordinarily from the acts of the defendant, but where the intent to do something with reference to somebody else is charged it would seem then that also the acts of the person affected would necessarily be competent and material, to throw light upon what the defendant's intent was. That is our theory.

THE COURT: That may very well be. But the objection now is as to the competency of the proof. Possibly the letter, or the contents of the letter, would be material, but the objection is to the competency of oral testimony touching the contents of the letter. I will have to sustain the objection on that ground. The motion to strike out the last question and answer must be allowed.

MR. TERRELL: Q. Mrs. Pappas, I understood

Pocatello the last time? You have mislaid them or left them somewhere?

A. Yes, sir.

Q. And you can not at this time produce them?

A. No.

Q. And I also understood you to testify in response to the questions of the Assistant District Attorney that you didn't remember specifically the contents of those letters?

A. No, sir.

Q. While you were living at the Boise Rooming House, you stated that you were working as a chamber maid?

A. Yes, sir.

Q. For whom?

A. Mrs. Peter Cayias.

Q. What salary did you receive?

A. Twenty-five a month and room and board.

Q. And room and board?

A. Yes, sir.

Q. What was your husband engaged in at that time?

A. He was working for John Pattas.

Q. The same place that he is now engaged?

A. Yes, sir.

Q. And about a month ago, I believe you stated, you left the Boise Rooming House?

A. Yes, sir.

A. From twelve to twelve.

Q. Twelve o'clock noon until twelve o'clock at night?

A. Yes, sir.

Q. Did yourself and your husband occupy this room at the Boise Rooming House jointly?

A. Yes, sir.

Q. During all the time that you remained at that house?

A. Yes, sir.

Q. Did you ever entertain or receive men in that room of yours in your husband's absence, or at all?

A. No, sir.

Q. What were the requirements of your position there? What were you required to do?

A. Just make beds and keep the rooms clean, and cook.

Q. How many rooms in the house?

A. Nineteen.

Q. In that rooming house?

A. Nineteen.

Q. Did it require all of your time and attention to attend to your duties as a chambermaid?

A. Yes, sir.

Q. What were your habits, as to how you conducted yourself or did after the work-day was over, in the evening hours?

A. I went to the show.

Q. Whereabouts?

whether or not you went alone or accompanied by someone else?

A. I went with Mrs. Cayias and Mr. Cayias.

Q. Your husband's shift prevented him from going with you?

A. Yes, sir.

MR. TERRELL: I believe that is all.

RE-DIRECT EXAMINATION:

By MR. SMEAD:

Q. Did you take care of all the rooms in the Boise Rooming House?

A. Yes, sir.

Q. Your work included all of them, did it?

A. How?

Q. Your work was to take care of all of the rooms?

A. Yes, sir.

Q. You stated on cross examination that you had never practiced prostitution since you have been married?

A. Yes, sir.

Q. I will ask you now if you practiced prostitution before you were married?

A. Yes, sir, before.

Q. Where?

A. In Rock Springs.

Q. At the time you met your husband?

A. Before.

Q. I believe you stated on cross examination that your husband had never suggested to you that you engage in the prostitution since you have been married, did you?

A. Yes, sir.

MR. SMEAD: I will ask to have this letter marked as Government's Exhibit A.

Said letter was thereupon marked *Government Exhibit A*.

Q. Handing you this paper marked at the top Government's Exhibit A, I will ask you if you wrote that letter?

A. Yes, sir.

Q. Is that letter true?

A. No, sir.

Q. Why did you write as you did?

A. I wrote more for sympathy, that is all.

Q. Who is "Mae," as addressed in this letter?

A. Mae Everson.

Q. Of Rock Springs, Wyoming?

A. Yes, sir.

MR. SMEAD: I offer this letter in evidence, in connection with her statement on cross examination that her husband never asked her to practice prostitution.

MR. TERRELL: We object to the offer of Government's Exhibit A, upon the grounds and for the reasons that it is a letter which it is admitted was

as this letter is.

THE COURT: Overruled.

MR. SMEAD: With the Court's permission, I don't think I will stop to read that letter to the jury now. It is short and will be read when the argument is had. If the court prefers, however, I will do it in the regular way.

THE COURT: I don't know how material it is. It would be better, of course, to read it now, if it is particularly material, so that the jury will understand.

MR. SMEAD: Very well. (Reading Government Exhibit A.)

"CROW HOTEL.

Pocatello, Idaho, June 30, 1916.

My dearest Mae.

I guess you wont care to hear from me but I do hope you wont turn me down because I took a step I am sorry for—"

MR. TERRELL: Will you suffer an objection there? This letter appears to have been written to Mae Everson, and without the presence of the defendant. Now we think that in view of the fact that it is only offered for the purpose of impeaching this witness' testimony, we concede that that part of it which impeaches her testimony would be competent to read, perhaps, but not the entire letter, unless it

posed from what the District Attorney said that it would be very short, and that it related only to the one matter. Of course, if it is offered only for the purpose of impeaching—

MR. SMEAD: Impeaching her statement in regard to the—

THE COURT: If that part can be segregated.

MR. SMEAD: I don't know that I can, your Honor. In my judgment the whole letter tends to the same effect in substance and specifically.

THE COURT: I think I shall have to permit counsel to read at least the first page, Mr. Terrell. Do you have any objection to the second page? If you do, I think I shall exclude that. I don't think the second page bears directly or indirectly on this particular thing.

MR. SMEAD: No, I don't think it does, except in the effect of the whole letter; it has the same effect which the specific part of it is offered for.

THE COURT: I think if you read the first page it will be sufficient to cover the point in question.

MR. SMEAD: Very well. Then may the record show that I detach the second page of the letter, here in the presence of the court?

THE COURT: Very well. Just read the first page. We will see, when it is necessary for it to go to the jury.

MR. SMEAD (reading):

I gess you wont care to hear frome me but I do hope you wont turn me down because I took the step I am sorry for will you May. God nos I am the unhappiest girl that has ever walked in shoes but as soon as I get well I am going to make some money and good night Zell. You no how I went to work and married bill and here I am 2 days married and wants me to hustle, but when I do it will be for myself to—”

I can't make out that word, but the next word is “it.” The word seems to be spelled b-e-t, for “beat” or “bet.”

“Mae will you please promiss me you wont tell Mother that I am broken hearted, for I told her in the letter I was happy but I am not nor never will be.”

That is the end of the first page.

THE COURT: By the word “Bill” in that letter to whom did you refer?

A. My husband.

MR. TERRELL: We move that the testimony read into the record be stricken out as an impeachment of the Government's own witness.

THE COURT: Overruled.

MR. SMEAD: Q. Did you know Mae Everson, the lady to whom this letter was written, before you were married?

A. Yes, sir.

Q. What did she do there?

A. She run a rooming house

Q. What was the name of it?

A. Lincoln.

MR. SMEAD: That is all.

RE-CROSS EXAMINATION:

By MR. TERRELL:

Q. Mrs. Pappas, you have testified that you wrote that letter. You also told the Assistant District Attorney that it was not true. What explanation have you to make with respect to the statements contained in that letter?

A. I wrote it just for sympathy, to see if she wouldn't send me my money that she owed me.

Q. What was the occasion for appealing to her sympathy?

THE COURT: To see if she would send money, you say?

A. Yes, sir, that she owed me, five month's wages.

MR. TERRELL: Q. You say the occasion for your appealing to her sympathy was because she owed you money?

A. Yes, sir.

Q. How much money did she owe you?

A. Five months' wages.

Q. Five months' wages?

A. Yes, sir.

Q. You testified in response to opposing coun-

A. Yes, sir.

Q. Of which Mrs. Everson or Mae Everson is the proprietress?

A. Yes.

Q. Prior to the time that you went to work for Mae Everson at the Lincoln Rooming House in Rock Springs where did you stay?

A. Home.

Q. At your mother's?

A. Yes, sir.

Q. Your mother lives in Rock Springs?

A. Yes, sir.

Q. Prior to the time of your going to the rooming house of Mae Everson to work had you ever engaged in prostitution or had any improper relations with men?

A. No, sir.

Q. Did you begin that life while working at this house?

A. Yes, sir.

Q. How old are you, Mrs. Pappas.

A. Nineteen.

Q. When?

A. The 10th of this month.

Q. The 10th of this month?

A. Yes, sir.

Q. Now, this letter was written on the 30th of June?

that, as I understand:

A. Just a week.

Q. And if the things which have been read in evidence here as having been written by you were true, would you have come back to Pocatello?

MR. SMEAD: That is objected to as immaterial.

THE COURT: Sustained.

MR. TERRELL: Q. Did your husband know that you had written any such letter as this?

A. No, sir.

Q. Did he ever see the letter or did you ever tell him anything about it?

A. No, sir.

MR. SMEAD: That is objected to as immaterial also. I don't see how it is material at this time whether he saw it or not.

THE COURT: It isn't material, but she has answered it. Let us get on.

MR. TERRELL: Q. I understand you to say that the statements therein made or read into the record are not true?

A. No, sir.

Q. As a matter of fact?

A. No, sir.

MR. TERRELL: That is all.

MR. SMEAD: If the Court please, I don't care anything about getting the rest of this letter in evidence except in connection with one more question I want to ask this witness in this matter of the wages

order to make my question competent, as I think it is.

THE COURT: I think in view of her statement, you may read the balance of the letter into the record. You may have your exception, if you desire.

MR. TERRELL: I understood that the preliminary stipulation covers all exceptions to all adverse rulings.

THE COURT: Yes. I am permitting him to read this now as rebutting the idea that she wrote it for the purpose of getting the wages which she claims were due her.

RE-DIRECT EXAMINATION:

MR. SMEAD: Taking up the letter, gentlemen, where I left off before:

"I done it more to be my own boss, but give me single life. Mae I love you for you were good to me and I cant stand to stay away frome you. You were better to me than ever my own folks were, so for Gods sake dont you turn me down will you Mae. Well I cant write any more for I cant stand it so be good Mae and tell Frank to do the same and tell tom hello for me.

I remain as ever your Loving pal Zell.

P. S. My address is Mrs. William Pappis, Gen. Del. Please write to me soon and lots of love to you both."

That is all.

MR. TERRELL: That is all.

(Witnesses Pearl Collins, Violet Hall, Grace

And thereupon, Charles A. Baldwin, called as a witness on behalf of the plaintiff, being first duly sworn, among other things, testified that he was a member of the police force in the City of Pocatello, Idaho, during the months of July and August, 1916; that he knew the location of the Boise Rooming House, in the City of Pocatello, Idaho; that, in his official capacity, he went to the Boise Rooming House from time to time during the months of July and August; that he knew by sight the witness, Zella Pappas, the wife of the defendant, William Pappas; that the Boise Rooming House was reputed to be a house of prostitution; that prostitutes in this house and other similar resorts in the City of Pocatello, Idaho, were accustomed to paying fines to the City of Pocatello, Idaho, as vagrants or people without visible means of support; that on one occasion in the month of July, 1916, or the early part of August, 1916, he had a conversation with the witness, Zella Pappas, the wife of the defendant, in which she said: "My God, I would fall dead if I had to go down before that Judge and pay a fine"; that he then left the room and that Zella Pappas followed him and requested him to take her fine to the Police Judge; all of which conversation between the said Charles A. Baldwin and Zella Pappas was objected to by the said defendant, after it had been shown by a question put to the said Charles A. Baldwin upon his voir dire, that such

petent and immaterial.

At the close of the foregoing evidence in chief offered by the plaintiff, counsel for the defendant renewed his motion to require counsel for the plaintiff to elect upon which count of the indictment he would rely; which said motion the Court then and there overruled.

The defendant, to sustain the issue upon his part, then through his counsel offered, among other, the following testimony as his evidence in chief:

ZELLA PAPPAS, heretofore duly sworn as a witness for plaintiff, upon being recalled on behalf of defendant, testified as follows:

DIRECT EXAMINATION:

By MR. TERRELL:

Q. Mrs. Pappas, did you hear the testimony last night of Mr. Baldwin, patrolman, with reference to certain conversations, which he said he had with you sometime during the month of last July?

A. Yes, sir.

Q. Did you have the conversation in terms or words, as related by him, with him?

A. No, sir.

Q. I will ask you to state to the jury the conversation that you did have with Mr. Baldwin.

A. I was sitting on the back porch reading, with Mrs. Cayias, and Mr. Baldwin came up stairs, and she said: "This is my girl," and she said, "I think

she is good to them they are good to her. That is all he said.

Q. Did you ever have more than one conversation with him?

A. No, sir.

Q. What time of day was it that this conversation occurred?

A. That was about eight o'clock in the evening.

Q. In the evening?

A. Yes, sir.

Q. Did you ask him, or did you say you would fall dead if you had to go before the police judge and pay a fine?

A. No, sir.

Q. Did you ask him if he couldn't or wouldn't take your fine to the police judge?

A. No, sir, I never.

Q. At the time that you were working at this rooming house how many ladies altogether were there in or about the house, including yourself and the landlady?

A. Three.

Q. Three besides yourself and the landlady?

A. Yes, sir.

Q. During the time that you worked there to what extent were the other rooms occupied? Were they occupied by any one?

A. No; there was quite a bit of parlor.

Q. There were nineteen rooms, as I understand, in the house?

Hall and Grace Brown and Pearl Collins, did they each occupy a room?

A. Yes, sir.

Q. Who occupied the other sixteen rooms?

A. I don't know. Roomers.

Q. Were they occupied by roomers?

A. Yes, sir.

Q. When you would go to these other rooms to do your work would the beds be in a condition to indicate that they had been occupied by roomers?

MR. SMEAD: That is objected to as leading and suggestive, if the Court please.

MR. TERRELL: Perhaps it is, but I don't think the witness quite understood the purport of the question.

Q. I will ask you to state how you found the other sixteen rooms when you would go about from time to time in the mornings doing your work; what condition would they be in?

A. Just like someone slept in the bed.

Q. Looked like someone had slept in them?

A. Yes, sir.

Q. What street do you enter this rooming house from, Mrs. Pappas?

A. I don't know the street numbers. It is on the other side of the viaduct, just about on the corner there.

Q. You know the street that runs parallel along the railroad track is First Avenue?

across the market is First Avenue. Is the entrance off of that street, where you go up into the rooming house?

A. Yes.

Q. Is there also a rear entrance?

A. To the house?

Q. That you go up from the alley?

A. Yes, sir.

Q. That is the back entrance?

A. Yes, sir.

Q. Now this house is in the shape of a triangle, isn't it?

A. Yes, sir.

Q. That is, it is not square, but shaped in the shape of a triangle?

A. Yes, sir.

Q. When you get up stairs into the rooming house can you describe in a general way how the hallway divides the rooms up stairs?

A. There is a hall runs this way (indicating), and then you come up the steps that way (indicating), and the other hall goes that way (indicating). That is the only way I know.

Q. When you get to the top of the hall, state whether or not there is a hallway that goes straight east. That is east—towards the foothills.

A. That goes to the back porch, comes straight up the front steps and goes to the back porch.

Q. Straight through to the back porch?

A. Yes.

A. Yes, sir.

Q. Where is the office, what is known as the office?

A. They have no office.

Q. Did you say something about a considerable portion of the room was taken up for something else besides rooms?

A. Yes.

Q. What is that, that it is taken up for? What is that part used for?

A. For roomers.

Q. Did you make use of the other parlor; is there a parlor there?

A. Mrs. Cayias uses her room as the office. She has the book in there.

Q. She uses her room for the office?

A. Yes, sir.

Q. As you go up the steps, which side, to the right or left, is the apartment of Mrs. and Mr. Cayias?

A. On that side (indicating).

Q. Would it be on your right-hand side?

A. Yes, sir.

Q. How many rooms did they occupy, one or more?

A. Just the one.

Q. And which side was your room on?

A. It was on this side (indicating), back in the corner.

MR. TERRELL: I believe that is all.

CROSS EXAMINATION:

By MR. SMEAD:

Q. You stated in your examination when you were on the stand before that you didn't spend your evenings around that place.

A. Well, I did until eight-thirty.

Q. Until eight-thirty?

A. Yes.

Q. Then where did you go?

A. Picture show.

Q. Who with?

A. Mr. and Mrs. Cayias.

Q. Every night?

A. Some nights he couldn't go.

Q. Some nights he couldn't go?

A. No.

Q. Why not?

A. He was busy at the coffee house, I suppose.

Q. Did he have a place of business besides the rooming house?

A. Yes, sir.

Q. You say that was a coffee house?

A. Yes.

Q. And he had to be there in the evening, and you and Mrs. Cayias went to the shows alone?

A. Yes, sir.

Q. Did you go to the shows every evening?

did you spend at the Boise Rooming House?

A. Didn't spend any evenings.

Q. You and Mrs. Cayias went to the picture shows every night, did you?

A. Yes, sir.

Q. Will you kindly state who took care of that house while you went to the picture shows?

A. Her brother-in-law.

Q. Who was he?

A. Her brother-in-law.

Q. Did he live there?

A. Yes, sir.

Q. What did he do?

A. He worked for his brother in the coffee house.

Q. He worked for the coffee house and took care of the rooms too, did he?

A. Yes, sir.

Q. Where is that coffee house?

A. On the other side of the viaduct.

Q. How far from the coffee house?

A. About four doors from the coffee house.

Q. How would he be able to leave to take care of the rooming house in the evening?

A. There is other men in the coffee house to take care of that.

Q. There are other men in the coffee house?

A. Yes, sir.

Q. Where did they keep the guest register?

A. Yes, sir.

Q. And used that for the office?

A. They kept the book there.

Q. Did the people go in there to register?

A. No. She brought the book out in the hall right by her door.

Q. How do you know so much about that house if you weren't around there except when you were working?

A. I know she let me do my work and she would go renting rooms.

Q. And you know how she took care of people who came there?

A. I know she gave them a room, and that is all.

Q. You know how she had them registered?

A. No, sir, I never looked.

Q. I understood you to say you knew how she kept her book.

A. I know how she kept it in her room and brought it out and let them register.

Q. You have seen her do that in the evenings there too?

A. In the day time.

Q. Do you mean to say people didn't come there to register in the evening?

A. We wouldn't be there in the evening.

Q. You never were there any evening?

A. Just till about eight-thirty. I would come back after the picture show.

Q. Then from ten or a quarter past you were in the Boise House every night?

A. In my room.

Q. You were at the Boise House every night, were you not?

A. Yes, sir.

Q. You say you never talked to Mr. Baldwin, the policeman, but once?

A. No, sir, just once.

Q. As a matter of fact, you didn't say anything to him at all, did you?

A. No, sir.

Q. You didn't say a word to him?

A. No, sir.

Q. All the conversation there was is what you have related?

A. Yes, sir.

Q. Mrs. Cayias said you were her girl?

A. Yes, sir.

Q. And said that you were afraid of the police?

A. Yes, sir.

Q. And he said you needn't be afraid of the police if you were good, that they would be good to you?

A. Yes, sir.

Q. And you didn't say a word in all that conversation?

A. No, sir, I never did.

Q. And Mr. Baldwin's testimony was false, was it?

RE-DIRECT EXAMINATION:
By MR. TERRELL:

Q. Mrs. Pappas, are you able to state whether the people that occupied the sixteen rooms other than the rooms occupied by these other girls that I have mentioned roomed by the month, or whether they were transients, or do you know?

A. Well, there was just two or three, I think, by the week

Q. Two or three by the week, and the rest transients?

A. Yes, sir.

MR. TERRELL: That is all.

RE-CROSS EXAMINATION:

By MR. SMEAD:

Q. Do you remember going down to the police station in Pocatello on or about the 17th day of August this year?

A. Yes, sir.

Q. Do you remember seeing Mr. Hartvigsen down there?

A. Yes, sir, I seen all the police down there.

Q. Do you remember seeing Mr. Bone, this gentleman seated at my left, there that day?

A. Yes, sir.

Q. You recall the incident, do you?

A. He was sitting there in the chair when I went in.

Q. Do you remember talking to him that day, in the morning—in the afternoon, do you?

A. No, sir.

Q. You didn't say anything to him?

A. No, sir.

Q. I will ask you if about, near or during the evening of that day you stated to Mr. Bone, in Mr. Hartvigsen's presence, that you had been sporting at the Boise Rooming House and giving your husband the money that you made that way?

A. No, sir.

Q. And you are just as sure of that as you are of anything else you have stated, are you?

A. I never said that.

MR. SMEAD: That is all.

RE-DIRECT EXAMINATION:

By MR. TERRELL:

Q. The time counsel refers to, Mrs. Pappas, is that not the time when you were held in the city jail by Mr. Bone as a special agent of the Government, as a witness in this case?

A. Yes, sir.

Q. You never went there voluntarily, but you were taken there under arrest?

A. Yes, sir.

MR. SMEAD: Do you mean to intimate by that question that Mr. Bone took her there under arrest?

MR. TERRELL: Either him or under his direction. I think it was about the time of the preliminary, and she was put under bond, as I understand it, to appear as a witness, is my recollection.

Q. Or were you taken there by some one else?

A. Well, Mr. Smith came up and told Mrs. Cayias that he wanted me down to the police station.

Q. That is Mr. George Smith, the chief of police?

A. Yes, sir. And I was at the butcher shop getting meat at that time, and when I came home she told me, and I went down.

Q. That was after your husband's preliminary?

A. No, that was before, I think.

Q. Was it before or after your husband was arrested?

A. That was before.

Q. Before?

A. Yes.

Q. And you state that you made no such statements as have been asked you?

A. No, sir, not that I remember of.

Q. How?

A. No, sir, not that I remember.

Q. Well, would you have remembered it if you had made such statements as that?

A. I think so.

Q. And are you able to state now whether you made any such statements as that or not?

A. No, sir.

Q. What do you mean when you say "No, sir"—that you did or did not?

A. That I didn't.

MR. SMEAD: I object to that line of questioning. The question was very plain.

MR. SMEAD: I object to that. She has answered that. This is counsel's own witness. He hasn't any right to change the testimony in that way. We object to the question as having already been asked and answered.

THE COURT: She may answer.

(Last question read.)

A. No.

MR. TERRELL: That is all.

RE-CROSS EXAMINATION:

By MR. SMEAD:

Q. You say you didn't make that statement that you remember of?

A. No, sir, I don't remember.

Q. You don't remember making it?

A. No, sir.

MR. SMEAD: That is all.

MR. TERRELL: That is all.

(Witnesses for the defendant, Edgar Marston, John Pattas, William Pappas, L. F. Zundel, were thereupon sworn for defendant, and examined by both counsel.)

Whereupon the defendant rested and Leon Bone called as a witness in rebuttal, on behalf of the plaintiff, being first duly sworn, among other things testified, that he was and is a special agent for the Department of Justice; that his duties embrace the investigation of criminal cases cognizable by the Federal Courts of the States of Utah and Idaho; that on

the defendant; that he saw her twice on the 17th day of August, 1916, at the police station, in Pocatello, Idaho; that on the second occasion it was toward evening and that on the said second occasion she, the said Zella Pappas, the wife of the defendant, William Pappas, said to him, Leon Bone, "that she had been sporting at his, William Pappas's solicitation and giving William Pappas, her husband, the money ever since she had been in Pocatello, except for a while when she was sick;" all of which said conversation, as testified to, was had without the hearing of the defendant, William Pappas, and admitted over the objection of the defendant that it was hear-say testimony.

After the Court instructed the jury, the jury thereupon retired to consider their verdict and returned into Court a verdict finding the defendant guilty on each of the three counts contained in the indictment.

On the 21st day of October, 1916, the defendant was brought before the Court for the pronouncement of judgment and immediately prior thereto counsel for the defendant moved the Court in arrest of judgment on the grounds that the wife of the defendant had been improperly permitted to testify in said action against the defendant and that the evidence legally admissible in said action was not sufficient to support a judgment against the defendant, which said motion was by the Court then and there overruled and judgment was thereupon pronounced, as from said judgment will more fully appear.

Bill of Exceptions in this case, to the action of the Court, and prays that the same may be settled and allowed and signed and sealed by the Court.

The foregoing is duly allowed and settled as the defendant's Bill of Exceptions.

Dated November 27, 1916.

FRANK S. DIETRICH,
Judge.

Endorsed: Filed Nov. 27, 1916.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

ORDER GRANTING WRIT OF ERROR.
CRIMINAL.

On motion of Robert M. Terrell and William Edens, Esq., counsel for the above-named defendant, it is hereby ordered that a writ of error to the Circuit Court of Appeals of the United States, for the Ninth Circuit, from the judgment heretofore rendered and entered herein, be, and the same is hereby granted and allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the Clerk of the said Circuit Court of Appeals of the United States, for the Ninth Circuit.

It is further ordered that the said defendant be,

the termination of said proceedings in error, conditioned according to law, the same to act as a supersedeas bond.

Dated this the 24th day of October, 1916.

FRANK S. DIETRICH,
Judge of the United States District Court,
District of Idaho.

Endorsed: Filed Oct. 24, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)
PETITION FOR WRIT OF ERROR.
CRIMINAL.

Comes now the defendant herein, and complains and says that on or about the 21st day of October, 1916, this Court entered judgment and sentence herein in favor of the plaintiff and against the defendant, in which judgment and proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of this defendant, all of which and more in detail appear from the assignments of error which is filed with the petition.

Wherefore, this defendant prays that a writ of error may issue in his behalf out of this Court or out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of and that a transcript of the record, proceedings and papers in this cause duly authenticated,

(Title of Court and Cause.)
ASSIGNMENT OF ERROR.
CRIMINAL.

Now comes the defendant in the above entitled action, in connection with his petition for a writ of error, and makes the following assignment of errors, which he avers occurred upon the trial of the above entitled cause, to-wit:

1. That the United States District Court for the Eastern Division, District of Idaho, erred in overruling the objection of the defendant to the competency of Zella Pappas, wife of the defendant, to testify in said action on behalf of the plaintiff over the objection and without the consent of the defendant.

2. The Court erred in the admission of evidence offered by the plaintiff in the following instances, to-wit:

(a) In admitting in evidence plaintiff's Exhibit "A," being a letter purporting to have been written by Zella Pappas to one May Everson, said letter being in words and figures as follows:

"Pocatello, Idaho, June 30, 1916.

"My dearest Mae:

"I guess you wont care to hear from me but I do hope you wont turn me down because I took

shoes but as soon as I get well I am going to make some money and good night Zell. You know how I went to work and married bill and here I am 2 days married and wants me to hustel but when I do it will be for myself to bet it. Mae will you please promise me you wont tell mother that I am broken hearted, for I told her in the letter I was happy but I am not, nor never will be. I done it more to be my own boss, but give me single life. Mae I love you for you were good to me and I can't stand to stay away from you. You were better to me than even my own folks were, so for God's sake don't you turn me down will you Mae. Well I can't write any more for I can't stand it, so be good Mae and tell Frank to do the same, and tell tom hello for me. I remain as ever your loving pal Zell.

"P. S. My address is Mrs. William Pappas, Gen. Del. Please write to me soon and lots of love to you both."

Said letter being incompetent for the reason that it was in effect testimony given by the wife against the husband in a case wherein such evidence is incompetent and for the further reason that it is a statement to a third party, made without the hearing and without the knowledge of the defendant.

(b) In the testimony given by Zella Pappas, the wife of the defendant, to the effect that on or about the 15th day of July, 1916, the said Zella Pappas

Company from Rock Springs, Wyoming, to Pocatello, Idaho; that she purchased such a ticket; that she used it in traveling on a train of the Oregon Short Line Railroad Company from Rock Springs, Wyoming, to Pocatello, Idaho; that upon arriving in the City of Pocatello, she went to the Crow Hotel, in said City of Pocatello, Idaho, and not finding defendant, her husband, in said hotel she went to the Boise Rooming House in the City of Pocatello, Idaho; that defendant roomed at the said Boise Rooming House in the City of Pocatello, Idaho; that the said Zella Pappas worked as a domestic servant in the Boise Rooming House for the proprietor thereof for the sum of \$25.00 per month and board and room; that she, the said Zella Pappas, and her husband, William Pappas, the defendant, roomed together at said Boise Rooming House from the arrival of the said Zella Pappas in the City of Pocatello, Idaho, to-wit: on or about the 15th day of July, 1916, until the arrest of the defendant, William Pappas, on the charge contained in the indictment in the above entitled action; that she, the said Zella Pappas, wrote the said letter hereinbefore referred to as the plaintiff's Exhibit "A."

(c) In the testimony given by Charles Baldwin, a policeman in the City of Pocatello, Idaho, to the effect that during the latter part of July and the early part of August, 1916, he had conversation with Zella Pappas, the wife of the defendant, wherein she,

Judge of Pocatello, Idaho) and pay a fine (meaning a fine such as was customarily paid by prostitutes in the City of Pocatello, Idaho, for plying their vocation) and wherein she asked the said witness, Baldwin, if he could not or would not take her fine to the said Judge. All of said testimony being statements purported to be made by Zella Pappas not in the presence or hearing of the defendant, William Pappas, and she being at said time the wife of the defendant, William Pappas.

(d) In the testimony given by Leon Bone, Special Agent of the Department of Justice and a witness for the plaintiff, to the effect that in a conversation with Zella Pappas, the wife of the defendant, had a short time after the 15th day of July, 1916, at the Police Station in the City of Pocatello, when the defendant, William Pappas, was not present and without his hearing, wherein the said Zella Pappas stated, according to the testimony of said Leon Bone, that she, the said Zella Pappas, while rooming in the said Boise Rooming House, had engaged in the practice of prostitution at the solicitation of William Pappas, the defendant, and that she had given William Pappas the money derived therefrom.

III. The Court erred in refusing to allow the motion of the counsel for the defendant, made at the conclusion of plaintiff's testimony, to require the counsel for the plaintiff to elect upon which of the three counts contained in the indictment in said action he would rely upon for the conviction or

different manner in each count.

IV. The Court erred in rendering and entering judgment against the defendant on each one of the three counts contained in the said indictment for the following reasons:

(a) The evidence on each count was insufficient to sustain the judgment rendered and entered on each count.

(b) Legal judgment could not be entered, except upon one of the said three counts contained in said indictment, there being but one offense alleged in the three counts in said indictment.

V. The Court erred in refusing to allow the motion of counsel for the defendant in arrest of judgment.

WHEREFORE, defendant prays that the judgment of the District Court may be reversed.

ROBERT M. TERRELL,

WM. EDENS,

Attorneys for Defendant.

Res., Pocatello, Idaho.

Endorsed: Filed Oct. 24, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

BAIL IN ERROR. CRIMINAL.

We, William Pappas, residing at Pocatello, Bannock County, Idaho, as principal, and E. C. White,

debted to the United States of America in the sum of Five Thousand and no-100 (\$5,000.00) Dollars, lawful money of the United States of America, to be levied of our goods, chattels, lands and tenements, upon this condition:

That if the said William Pappas, the defendant upon whose application a writ of error has been allowed by the District Court of the United States, District of Idaho, to the Circuit Court of Appeals of the United States, for the Ninth Circuit, shall be and appear before said United States District Court of Idaho, on the termination of the proceedings on said writ of error and the receipt and filing of a mandate or other process or certificate, showing the disposition thereof by the said Circuit Court of Appeals, or within five days thereafter, to answer and obey whatever final order or judgment, except as to costs, shall be made in the premises and not depart said Court, without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

WILLIAM PAPPAS,	(LS)
E. C. WHITE,	(LS)
W. E. TRAPP,	(LS)
JOHN PATTIS,	(LS)
GUST TURLOS.	(LS)

duly sworn, deposes and says: That he resides at Pocatello, Bannock County, in said District of Idaho; that he is a freeholder in the County of Bannock, State of Idaho; that he is worth the sum of Five Thousand and no-100 (\$5,000.00) Dollars, over and above all his just debts and liabilities in property, subject to execution and sale, and that his property consists of real property, to-wit: residence and business property in the City of Pocatello, Idaho, and ranch property in Bannock County, Idaho, and personal property in the City of Pocatello, Idaho.

E. C. WHITE.

Subscribed and sworn to before me this 24th day of October, 1916.

W. D. McREYNOLDS,

(Seal)

Clerk U. S. District Court.

United States of America,

Eastern Division,

District of Idaho,—ss.

W. E. Trapp, a surety on the annexed bail, being duly sworn, deposes and says: That he resides at Pocatello, Bannock County, in said District; that he is a freeholder in the County of Bannock, State of Idaho; that he is worth the sum of Five Thousand and no-100 (\$5,000.00) Dollars, over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of real property, to-wit, residence and business prop-

Subscribed and sworn to before me this the 24th day of October, 1916. W. D. McREYNOLDS,

(Seal)

Clerk U. S. District Court.

Approved: Frank S. Dietrich, Judge.

October 25, 1916.

Endorsed: Filed Oct. 25, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

STIPULATION FOR RECORD ON RETURN OF
WRIT OF ERROR.

IT IS HEREBY STIPULATED, by and between the respective parties to the above entitled cause through their attorneys of record that the following portions only of the record in said cause shall be certified by the Clerk of the above entitled Court to the United States Circuit Court of Appeals for the Ninth Judicial Circuit in response to the writ of error herein, to-wit:

1. Indictment.
2. Minute entry of Clerk, showing plea of defendant.
3. Verdict of Jury.
4. Judgment.
5. Bill of Exceptions.
6. All stipulations entered into by the attorneys for the respective parties.
7. Petition for Writ of Error.
8. Assignment of Errors.

12. Return to Writ of Error.

13. Certificate of Clerk.

J. L. McCLEAR,
United States District Attorney,
District of Idaho,
Attorney for Plaintiff.

R. M. TERRELL,
WILLIAM EDENS,
Attorneys for Defendant,
Res., Pocatello, Idaho.

(Title of Court and Cause.)

PRAECIPE TO CLERK.

To Honorable W. D. McReynolds, Clerk of the above
entitled Court:

In response to the Writ of Error in the above entitled cause, you are hereby requested to transmit to the United States Circuit Court of Appeals, those portions of the record in said cause, which are specified in the foregoing stipulation, with title page, index and certificate, as required by the rules of said Court and the rules of the United States Circuit Court of Appeals.

R. M. TERRELL,
WILLIAM EDENS,
Attorneys for the above
named Defendant.

Endorsed: Filed Nov. 23, 1916.

W. D. McReynolds, Clerk.

TO PREPARE, SETTLE AND FILE BILL
OF EXCEPTIONS.

It is hereby stipulated by and between J. L. McClear, United States District Attorney for the District of Idaho, Attorney for the above-named plaintiff, and R. M. Terrell, Esq., and William Edens, Esq., attorneys for the above-named defendant, that the said attorneys for the defendant may have forty days from the 24th day of October, 1916, within which to prepare, settle and file a bill of exceptions to be used on a review of the above entitled cause.

J. L. McCLEAR,
United States District Attorney,
District of Idaho,

Attorney for the Plaintiff.

R. M. TERRELL,
WILLIAM EDENS,

Attorneys for Defendant,
Res., Pocatello, Idaho.

Approved:

FRANK S. DIETRICH, Judge.

November 24, 1916.

Endorsed: Filed Nov. 24, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

STIPULATION FOR THE SETTLING, ALLOW-
ANCE AND FILING OF BILL OF EXCEP-
TIONS.

pared by counsel for the above-named defendant, and served on counsel for the above-named plaintiff, may be by the Court settled, allowed, certified and filed as amended by law and the rules of said Court required, as the defendant's Bill of Exceptions in the above entitled cause.

Dated this the 23rd day of November, 1916.

J. L. McCLEAR,

United States District Attorney,
District of Idaho.

R. M. TERRELL,

WILLIAM EDENS,

Attorneys for the above-named
Defendant.

Endorsed: Filed Nov. 24, 1916.

W. D. McReynolds, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

UNITED STATES OF AMERICA, Plaintiff,
vs.

WILLIAM PAPPAS, Defendant.

WRIT OF ERROR.

The United States of America,
Ninth Judicial District,—ss.

The President of the United States,

To the Honorable Judge of the District Court of
the United States, for the District of Idaho, greeting:

Because in record and proceedings, as also in the

States of Idaho said William Pappas, defendant, a manifest error hath happened, to the great damage of the said William Pappas, defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco in said Circuit, on the 23rd day of November next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable Edward D. White, Chief Justice of the United States, this 24th day of October, A. D. 1916, and in the 141st year of the independence of the United States of America.

Allowed by Frank S. Dietrich, United States District Judge.

Attest: W. D. McREYNOLDS,
Clerk of the District Court of the
United States, District of Idaho.

(Seal)

U. S. District Attorney.
J. R. SMEAD,
Assistant U. S. Attorney.

*In the United States District Court, Eastern Division,
District of Idaho.*

UNITED STATES OF AMERICA, Plaintiff,

vs.

WILLIAM PAPPAS, Defendant.

CITATION IN ERROR.

Criminal—479.

United States of America,
Eastern Division,
District of Idaho,—ss.

To the United States of America, the above-named plaintiff, and J. L. McClear, Esq., United States District Attorney for the District of Idaho, Counsel for the above-named plaintiff.

YOU ARE HEREBY CITED AND ADMONISHED to be and appear in the Circuit Court of Appeals of the United States for the Ninth Circuit to be held in the City of San Francisco, State of California, on the 23rd day of November, A. D. 1916, pursuant to an order allowing a writ of error filed and entered in the Clerk's office of the District Court of the United States for the Eastern Division, District of Idaho, from a final judgment rendered, signed, filed and entered upon the 21st day of October, 1916, in that certain action, criminal, wherein William Pappas is

why the said judgment be rendered, signed, read and entered against said plaintiff in error, as in said order allowing said writ of error mentioned should not be reversed and why justice should not be done to and between the parties in that behalf.

WITNESS, the Honorable F. S. Dietrich, United States District Judge, District of Idaho, this the 24th day of October, 1916, and of the independence of the United States of America, the one hundred and forty-first.

FRANK S. DIETRICH,
United States District Judge,
District of Idaho.

Filed this the 24th day of October, 1916.

W. D. McREYNOLDS,
Clerk of United States District Court.

RETURN TO WRIT OF ERROR.

In obedience to the command of the within writ, I herewith transmit to the Ninth Circuit Court of Appeals of the United States, a duly certified transcript of the record and proceedings in the within entitled cause, together with all things concerning the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the United States District Court for the District of Idaho.

(Seal) W. D. McREYNOLDS,
Clerk of the United States District Court
for the District of Idaho.

do hereby certify that the above and foregoing transcript of pages from 1 to 75, inclusive, contain true and correct copies of the Indictment, Minute Entry of Clerk, showing plea of defendant, Verdict of Jury, Judgment, Bill of Exceptions, Order granting Writ of Error, Petition for Writ of Error, Assignment of Errors, Bail Bond, Stipulation for record on return of Writ of Error, Praecipe for transcript, Stipulation as to time within which to prepare, settle and file Bill of Exceptions, Stipulation for the settling, allowance and filing of Bill of Exceptions, Writ of Error, Citation, Return to Writ of Error, and Clerk's Certificate, in the above entitled cause, which constitute the transcript of the record and return to the annexed Writ of Error.

I further certify that the cost of the record herein amounts to the sum of \$122.95, and that the same has been paid by the plaintiff in error.

Witness my hand and the seal of said Court, affixed at Boise, Idaho, this 13th day of December, 1916.

W. D. McREYNOLDS,

(Seal)

Clerk.

... ..

WILLIAM PAPPAS, Plaintiff in Error,
vs.
UNITED STATES OF AMERICA, Defendant in Error.

Brief of Plaintiff in Error

*Upon Writ of Error from the United States District
Court for the District of Idaho,
Eastern Division.*

R. M. TERRELL,
WILLIAM EDENS,
Attorneys for Plaintiff in Error,

SYM WORK CO. PRINTER & BINDERS BOISE 43445

JAN 30 1917

F. D. Monckton,
Clerk.

WILLIAM PAPPAS,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Brief of Plaintiff in Error

STATEMENT OF CASE.

The plaintiff in error, William Pappas, was indicted in the United States District Court, District of Idaho, for the violation of the Mann White Slave Act of June 25th, 1910, and was charged with unlawfully transporting or causing to be transported one Zella Pappas from Rock Springs, Wyo., to Pocatello, Idaho, for immoral purposes in violation of said Act. (Rec., page 7.)

The defendant was tried in the United States District Court at Pocatello, Idaho, and was found guilty on each of the three counts in said indictment and on the 21st day of October, 1916, was by the United States District Court sentenced to serve a term of twenty months in the United States Penitentiary at

concurrent, from which judgment the defendant has brought this cause to this Court on Writ of Error.

During the trial of said cause Zella Pappas was called as a witness on behalf of the government and testified that her home was in Rock Springs, Wyoming. (Rec., p. 17.)

And that she was the wife of William Pappas on the 15th day of July, 1916, and is now the wife of the defendant, and that she had never been divorced from defendant. These facts having been proven, the defendant's counsel objected to this witness testifying against defendant for the reason that she was the wife of the defendant and not a competent witness to testify against him in this cause, which objection the Court over-ruled and defendant duly excepted. (Rec., p. 18.)

Thereafter the witness, Zella Pappas, wife of the defendant, was permitted to testify against the defendant, William Pappas, her husband. (Rec., pages 20 to 43.)

Charles A. Baldwin, another witness, was called by the government and over the objection of the defendant stated that in the month of July, 1916, he had conversation with witness, Zella Pappas, the wife of the defendant, in which she said:

"My God, I would fall dead if I had to go down before that Judge and pay a fine. And that he, Baldwin, then left the room and that Zella Pap-

of the defendant. (Rec., p. 44.)

During the trial of this cause there was introduced in evidence by the government, over the objections of the defendant, a letter as follows:

“CROW HOTEL

“Pocatello, Idaho, June 30, 1916.

“My dearest Mae:

“I gess you wont care to hear frome me but I hope you wont turn me down because I took the step I am sorry for will you Mae. God nos I am the unhappiest girl that has ever walked in shoes but as soon as I get well I am going to make some money and good night Zell. You no how I went to work and married bill and here I am 2 days married and wants me to hustle, but when I do it will be for myself to—”

(Explanation by Mr. Smead, District Attorney.)

“Mae will you please promiss me you wont tell Mother that I am heart broken for I told her in the letter I was happy but I am not nor never will be.

“I done it more to be my own boss, but give me single life. Mae I love you for you were good to me and I can't stand to stay away from you. You were better to me than ever my own folks were so for God's sake dont you turn me down will you Mae. Well I cant write any more for I cant stand it so be good Mae and tell Frank to do the

P. S. My Address is Mrs. William Pappas,
Gen. Del. Please write to me soon and lots of
love to you both."

Which letter was written by Zella Pappas, the wife
of the defendant, William Pappas, to May Everson.

The errors complained of and urged in this Court
are as follows:

FIRST ASSIGNMENT OF ERROR.

That the United States District Court for the Dis-
trict of Idaho erred in permitting Zella Pappas, the
wife of the defendant, to testify in said action on
behalf of the plaintiff over the objections and without
the consent of the defendant.

Upon this question there seems to be an irreconcil-
able conflict of authority in the opinions of the Cir-
cuit Court of Appeals and the various District Courts
of the United States but we are of the opinion that
the weight of authority and better reasoning of the
cases in point is against the right of the wife to tes-
tify against the husband, in cases like the one at bar
and of similar nature:

"The competency of witnesses in criminal trials
in the Courts of the United States is not governed
by statute of the State where the trial is brought
but by the common law, except where Congress
has made specific provisions on the subject."

Logan vs. U. S., 144 U. S. 263, 303, 12 Sup.
Ct. 617, 36 L. Ed. 429.

It is a well-known rule of common law that neither husband nor wife was a competent witness in a criminal action against the other except in cases of personal violence, the one upon the other.

This principle of the common law has been ably discussed in several cases by the Supreme Court of the United States.

Bassett vs. U. S., 137 U. S. 496, 11 Sup. Ct.
165, 34 L. Ed. 762.

Hopkins vs. Grimshaw, 165 U. S. 342.

The case of the United States vs. Bassett was a case appealed from the Supreme Court of the territory of Utah and involved the right of the wife to testify against her husband in a prosecution for the crime of bigamy and involved the direct question as to whether or not the crime of bigamy constituted personal violence against the wife, and in this case it is clearly held that personal violence meant at the common law an assault by the husband or wife upon the person of the other. Quoting from the opinion of the Court, it is said:

“That it is humiliation and outrage to her is evident. If that is the test, what limit is imposed? Is the wife not humiliated, is not her respect and love for her husband outraged and betrayed, when he forgets his integrity as a man, and violates any human or divine enactment? Is she less sensitive, is she less humiliated, when he

her loyalty and reverence are wounded and humiliated by such conduct. But the question presented by this statute is not how much she feels and suffers, but whether the crime is one against her. Polygamy and adultery may be crimes which involve disloyalty to the marital relation but they are rather crimes against such relation than against the wife.

"We conclude, therefore, that under this statute (this statute being merely an reenactment of the common law rule) the wife was an incompetent witness as against her husband."

We contend that the principle involved and so well defined in this case should be the controlling principle applied in cases of violation of the White Slave Act and crimes of similar moral turpitude as adultery and polygamy.

In *Johnson vs. U. S.*, 221 Fed. 250, which was an opinion by the Circuit Court of Appeals for the Eighth Circuit, it being the case in which this question was directly involved and being a prosecution for violation of the Mann Act, the principle laid down in the *Bassett* case was followed.

We find in the case of *U. S. vs. Rispiku*, 189 Fed. 271, being a memorandum opinion by the District Court of the Eastern Division of Pennsylvania, that a different view was taken and in this case the District Judge held in favor of the competency of the wife to testify where the crime charged was a viola-

principle of the common law as approved in the cases heretofore cited by the Supreme Court of the United States.

The opinions of the Supreme Courts of the various states are irreconcilable and so also is the opinions by the different U. S. District and Circuit Courts, and we submit that no real cause exists or has existed for such a conflict in the opinions in the various District Courts, and the Circuit Courts of Appeals, if the principle laid down by the Supreme Court of the United States in the cases herein cited had been followed for the reason that the principle laid down in these is plain and we can see no just cause to be mistaken as to the principles laid down and approved in these cases.

Under the present statutes of the law and conflict in authorities the wife may be permitted to testify against her husband in the U. S. District Court in one circuit and in another circuit a different rule prevails.

It was within the power of Congress to make the wife a competent witness against her husband in prosecution for violations of the White Slave Act, but Congress did not see fit to incorporate such a provision in the Act as passed, and until the law is amended we are of the opinion that the wife is not a competent witness against her husband and without his consent in a case of this character.

ter written by the defendant's wife, Zella Pappas, to Mae Everson, being the letter set out in full in the statement of the case herein.

The contention of plaintiff in error is that this letter was inadmissable in evidence for two reasons:

(a) That the writer of the letter was the wife of the defendant and any declaration or statement made by her, she at this time being the wife of the defendant and not a competent witness against the defendant, would not be competent evidence against the defendant.

(b) That same is heresay evidence and a statement made by a third party without the hearing of the defendant and without his knowledge and consent and therefore incompetent and inadmissable, a hearsay.

If it should be decided by the Court that the wife was a competent witness against the defendant, then the statement or letter passing between the defendant's wife, Zella Pappas, and the third person without the knowledge and consent of the defendant would come within the general hearsay rule and would not be admissable under said rule excluding hearsay evidence, the same not coming within any exception to the rule.

If this letter had passed between the defendant and his wife and had come into the hands of a third party, then there might be some reason for admitting this letter in evidence; otherwise, it is incompetent.

Zella Pappas, the wife of the defendant.

This evidence is inadmissible for the same reasons as set forth in Assignment of Error number two, coming within the rule of hearsay evidence and being a statement made by the defendant's wife, she not being at the time of the making of the statement a competent witness against the defendant. The conversation referred to being more fully set out in a statement of the case herein.

We therefore respectfully submit to the Court that said judgment of the United States District Court for the District of Idaho should be set aside and a new trial granted.

Respectfully submitted,

R. M. TERRELL,

WILLIAM EDENS,

Attorneys for Plaintiff in Error,

Residence, Pocatello, Idaho.

/ .

Circuit Court of Appeals

For the Ninth Circuit

WILLIAM PAPPAS,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Brief of Defendant in Error

*Upon Writ of Error to the United State District Court for
the District of Idaho, Eastern Division.*

J. L. McCLEAR,

United States Attorney,

J. R. SMEAD,

Assistant U. S. Attorney,

Attorneys for Defendant in Error.

Filed

FEB 14 1917

F. D. Monahan

United States

Circuit Court of Appeals

For the Ninth Circuit

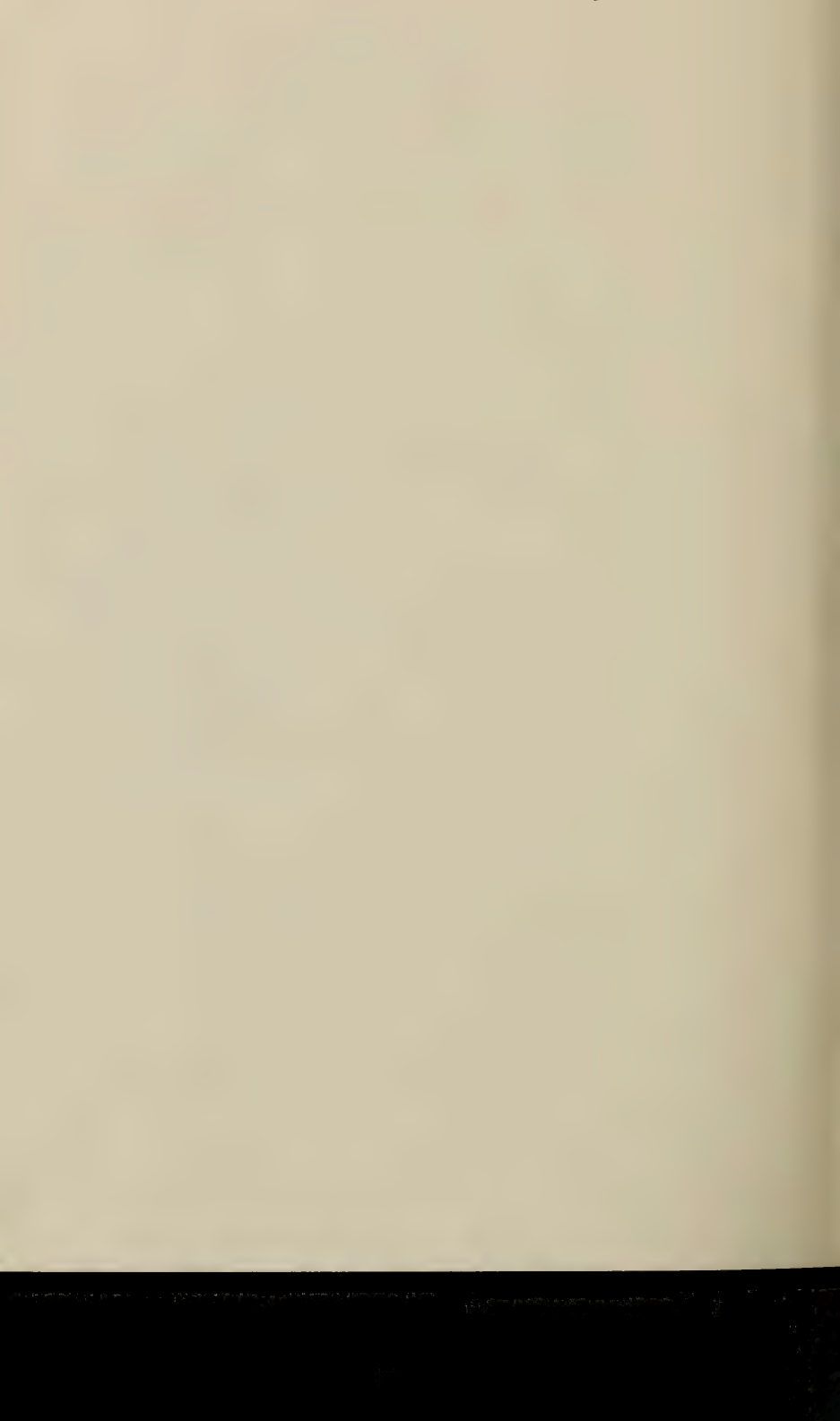
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Plaintiff in Error,	
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Defendant in Error.	}

Brief of Defendant in Error

*Upon Writ of Error to the United State District Court for
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J. L. McCLEAR,
United States Attorney,

J. R. SMEAD,
Assistant U. S. Attorney,
Attorneys for Defendant in Error.



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Defendant in Error.	}

Brief of Defendant in Error

STATEMENT.

The statement of facts embodied in the brief of plaintiff in error is substantially correct, but in connection with that statement it should be noted that the testimony of the witness Baldwin, set forth at page 2 of that brief, and the letter quoted at page 3 thereof, constituted evidence introduced for the purpose of impeaching the witness Zella Pappas, wife of plaintiff

questions propounded in cross examination by counsel for plaintiff in error. None of the testimony referred to was offered or admitted as being competent on the issue of the defendant's guilt or innocence.

Since the status and purpose of the evidence in question is fully covered in our argument upon the different assignments of error, it will be unnecessary to substantiate the foregoing statement by citations to the transcript at this time.

ARGUMENT.

I.

In a prosecution founded upon a violation of the White Slave Traffic Act of June 25, 1910, 36 Stat. at Large, Chap. 395, wherein the wife of a defendant is the victim of such violation, she is competent to testify on behalf of the prosecution, and may do so over defendant's objection.

* * * * *

Error is assigned as having been committed by the trial court in permitting the wife of plaintiff in error to testify on behalf of the Government without his consent and over his objection. It is urged in his brief that the rule of the common law should have governed the ruling upon this point, and that this case does not fall within the exception to that rule.

Plaintiff in error cites as his principal authority *Bassett vs. U. S.*, 137 U. S. 496, 34 L. Ed. 762, in which case it is held that the wife may not testify without the consent of her husband in the trial of a criminal action in which the husband is charged with the crime of polygamy. The United States Supreme Court held that such a case fell within the rule, and not within the exception touching cases involving personal injury directed by one spouse against the other. Summing up the whole situation the Court said:

"Polygamy and adultery may be crimes which involve disloyalty to the marriage relation *but they are*

It appears plainly, therefore, that the Supreme Court there held merely that the crime of polygamy is not an injury directed by the husband against the wife personally in such manner as to bring the case within the exception to the rule of marital privilege. Most certainly the Supreme Court did not, either by the rule of law there announced or by its discussion leading to such announcement, hold that the wife's competency is at the present day limited strictly to cases of corporal injury inflicted upon her person by the husband. It is merely stated in the course of the opinion referred to that such was the common law application of the rule at one time. The opinion does state the test to be applied in determining whether a given case falls within the rule of incompetency or within the exception thereto, as they are construed in modern jurisprudence. It is said:

“* * * The question presented * * * is not how much she feels and suffers, *but whether the crime is one against her.*” (Italics ours).

Accordingly this Court, in *Cohen vs. United States*, 214 Fed. 23, has heretofore construed the rule in question and there held that the transportation of the wife by the husband in interstate commerce with intent that she shall practice prostitution is such a personal injury to her as to entitle her to testify against him. That case was twice presented to the United States Supreme Court for review, the first time upon petition for a writ of certiorari directed to this Court, and the second upon a petition for a writ of habeas corpus as a substitute for a writ of error, and in both instances the petitioner was denied any relief.

Cohen vs. U. S. (Mem.) 235 U. S. 696, 35 Sup. Ct. Rep. 199, 59 L. Ed. 430.
Cohen vs. U. S. (Mem.) 238 U. S. 607, 35 Sup. Ct. Rep. 602, 59 L. Ed. 1486.

last cited, we submit that the question presented by the first assignment of error is *res adjudicata* in this Court. The only real authority to the contrary which plaintiff in error cites is the case of *Johnson vs. U. S.* 221 Fed. 250, wherein the Court of Appeals of the Eighth Circuit held the wife of a defendant on trial on a similar charge to be incompetent to testify against him. Doubtless the Court had reasons which seemed to it sufficient upon which to premise that holding, but it is certain that those reasons are not stated in the Court's opinion. The Court merely states that "at common law the rule was that neither husband nor wife could testify against each other," and makes no mention of the equally well established exception to that rule. It is then stated that the rule as quoted has not been changed by any statute and that therefore the wife of the defendant was an incompetent witness. We have no inclination to criticise the utterances of the Court, but we submit that the opinion referred to, taken at its full face value, is not persuasive.

We submit the question raised upon the first assignment of error without further argument, merely noting that the following cited authorities appear to us fully to bear out the proposition that the modern trend of judicial opinion is in line with, and fully sustains, the holding of this Court in *Cohen vs. U. S.*, *supra*:

U. S. vs. Rispoli, 189 Fed. 271.

U. S. vs. Gwynne, 209 Fed. 993.

40 Cyc. p. 2356, (IV).

"When * * the interest of justice demanded that the mouth of the husband or wife should be opened, as in prosecutions of either for a crime committed on the other, an exception was recognized from the necessity of the case, and the husband or wife was competent."

Underhill, Evidence, Section 166.

Where defendant elicits evidence upon cross-examination of a witness for the prosecution concerning matters not touched upon in the direct examination, the court may in its discretion permit the prosecution to examine such witness concerning prior contradictory statements made by such witness touching the same matters.

* * * * *

In his second and third assignments of error plaintiff in error attacks the ruling of the trial court admitting in evidence a certain letter written by the witness Zella Pappas, wife of plaintiff in error, and admitting testimony of the witness Baldwin concerning statements made to him by Zella Pappas prior to the commencement of this action.

Error in such rulings is predicated upon two grounds: first, that the witness Zella Pappas was the wife of plaintiff in error at the time of writing such letter and of making such statements, and that the same would not be competent evidence by reason of such marital relation; second, that said letter and said statements were hearsay evidence and were statements made without the hearing of the defendant and therefore incompetent.

As to the first ground of objection, that matter has been fully covered in the first division of our argument, wherein it has been shown that in a prosecution such as this the wife of the defendant, being the victim in the case, is entitled to testify over defendant's objection.

As to the second ground of objection, reference should be had to the transcript of record in order fully to understand the purpose of the evidence objected to and the reasons for its admission. At *Page 19, Transcript*, the direct examination of Zella Pappas is commenced, and continues to *Page 25*. It will be noted that the examination merely covers the movements and residence of plaintiff in error and his wife from

Page 27, in cross examination, counsel for plaintiff in error asked the following questions:

Q. "I will ask you, Mrs. Pappas, if your husband at any time during your acquaintance with him, either before or after your marriage, has ever suggested to you that you engage in the practice of prostitution?"

A. "No, sir."

Q. "Have you at any time since the marriage of yourself and Mr. Pappas engaged in the practice of prostitution?"

A. "Since I have been married?"

Q. "Since you have been married?"

A. "No, sir."

From this point to the end of the cross examination continues a very exhaustive and detailed inquiry into the personal affairs, life and habits of the witness from the time of her marriage to plaintiff in error.

At Page 35, *Transcript*, on re-direct examination, the matters gone into on cross examination, particularly with regard to the witness' statement that she had never practiced prostitution nor been urged or requested to do so by her husband since their marriage, are inquired into. After calling her attention to her statement that her husband had never suggested such practice since their marriage, the letter in question was submitted to the witness, and she admitted the writing thereof. The letter was then offered in evidence, and counsel for the defense objected upon the grounds *that the testimony was privileged* on account of the marital relation. This objection was overruled and counsel for the government commenced to read the letter to the jury, whereupon counsel for the defense interposed a further objection as follows:

"This letter appears to have been written * * * without the presence of the defendant. Now we think that in view of the fact that it is only offered for the purpose of impeaching this witness' testimony, we con-

will be competent to read, perhaps, but not the entire letter, unless it should be shown that it was written in the presence of the defendant himself."

Whereupon the court limited the reading to that portion of the letter bearing upon the witness' statements on cross examination in connection with which the letter was at this time offered in evidence. (*Transcript*, pp. 36-38).

It will be noted at this point that no objection was interposed to the offer except as already stated, to-wit, that the testimony was privileged on account of the marital relation. It will also be noted that the letter was conceded to be competent for purposes of impeachment. It will further be noted, (*Transcript*, p. 38), that in reply to a question by the court counsel for the government made it plain that the letter was offered only as an impeachment, and not in any sense as evidence bearing upon the issue of the defendant's guilt or innocence.

At *Page* 40, *Transcript*, on re-cross examination, defendant's counsel called upon the witness to explain her purpose in writing the letter, on the hypothesis that the statements therein contained were untrue. The witness answered that she wrote it for the purpose of obtaining certain money which she claimed to be due her from the addressee of the letter, to-wit, five months' wages. At *Page* 42, counsel for the government offered the remainder of the letter in evidence in connection with her explanation of wages claimed to be due her. This offer was received on that basis, and upon no other. (*Transcript*, p. 43).

In view of the fact that the only objection to the admission of the first portion of this letter was upon the ground of marital privilege, it would seem that the former ruling of this court holding the wife to be entitled to testify in a case such as this, disposes of the assignments of error based upon that objection. It was conceded that the first portion of the letter was competent as a prior statement conflicting with her testi-

letter, that was unquestionably rendered competent by re-cross examination at *Page 40, Transcript*, above referred to, wherein the witness stated her purpose in writing this letter. In order to weigh her statement, it was obviously necessary that the jury should have access to the whole of the letter. Otherwise, they could not know whether the statement was credible or not, nor could they know, on the other hand, how much weight to give the first portion of the letter, already admitted as an impeachment of her statement denying any suggestion of prostitution by her husband.

What has been said concerning the letter in question applies with equal force to the testimony of the witness Baldwin referred to in the third assignment of error. On her cross examination, already referred to, the witness stated she had never practiced prostitution since her marriage, that she had never associated with prostitutes, that she had never been in or about houses of ill fame or visited resorts frequented by questionable people, and generally asserted her respectability and the legitimacy of her occupation at the Boise Rooming House. The testimony of Baldwin (*Transcript, p. 44*) was to the effect that prior to the arrest of plaintiff in error, upon the occasion of a visit by him as city patrolman to the Boise Rooming House, which was a house of prostitution occupied by prostitutes who were accustomed to paying fines in the city police court, Zella Pappas stated very forcibly her reluctance to go before the police judge and pay a fine, and then followed him out of the room and requested him to take her fine to the police judge. This statement on her part was offered for the same purpose as the first portion of the letter referred to. The testimony concerning this statement was objected to upon the ground that it was a statement made without the hearing of the defendant. Again there was no objection to its admission for the purpose of impeaching her testimony given on cross examination; and again, on the other hand, this state-

the guilt of the defendant, but merely as a prior statement in conflict with her testimony on cross examination.

Neither the letter nor the testimony of Baldwin concerning this statement were subject to the objection submitted. Had the testimony been offered as statements binding upon plaintiff in error and tending to prove the charge laid against him, it would doubtless have been subject to the objection that it was hearsay and that the statements had been made outside his presence and hearing; but being offered as prior conflicting statements and the offer being limited to the purpose of impeachment, the assignments of error are not well founded for two reasons, either of which is sufficient in itself. First, no objection was made to the admission of the evidence for the purpose for which it was offered; second, had such objection been made, it should properly have been overruled. In *Tacoma Railway and Power Company vs. Hays*, 110 Fed. 496, this court has held the admission of evidence for the purpose of showing prior conflicting statements made by a witness who has been placed upon the stand by the party seeking later to introduce such impeaching testimony, to be within the discretion of the trial judge. The court in its opinion quotes, among others, *Hickory vs. U. S.*, 151 U. S. 303, 38 L. Ed. 170, in which case the admission or rejection of such evidence is held to be within the discretion of the trial judge, and in which opinion the following language appears:

“We cannot say that an error was committed because the court *in the exercise of its discretion*, under the circumstances, declined to concede any further relaxation of the rule.” (Italics ours).

We submit that plaintiff in error cannot now object to the admission of evidence which was received for a purpose for which it was conceded (*Transcript*, p. 37) to be competent, and which was admitted under circumstances which left its admission, by the rule of this Court, in the discretion of the

ments were hearsay and made without defendant's hearing was not properly directed to the offer for the reason that the evidence was neither offered nor received upon the issue of his guilt or innocence.

It was a practical necessity that the government should depend upon the witness Zella Pappas for evidence showing the interstate transportation. Having used her for this purpose, it would be a hard rule indeed, and one subversive of the ends of justice, to hold that the government should thereby be bound by any statement which she might choose to make upon other matters in the course of her cross examination, more especially so in a case such as this, where the witness had verbally and in writing, on several different occasions, stated the exact opposite of that to which she testified in cross examination.

CONCLUSION.

In conclusion we respectfully submit that the prayer of plaintiff in error for a new trial should be denied, and the judgment of the learned trial court be affirmed.

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